Supreme Court, U.S.
FILED
JUL 13 1993
OFFICE OF THE CLERK

93- 75
NO.

IN THE UNITED STATES SUPREME COURT

PLYMOUTH HEALTHCARE SYSTEMS, INC.
and
PLYMOUTH HEALTHCARE ASSOCIATES
PETITIONERS
VS.
KEYSTONE HEALTH PLAN EAST, INC.,
G. FRED DiBONA, JR.,
ALAN F. WISE,
JOHN A. DADDIS,
RICHARD J. GILFILLAN, M.D.,
THOMAS PAPPALARDO,
DECHERT, PRICE & RHOADS
and
MARK A. KLUGHEIT
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDIX

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a violation of Section 1962(a) of the Racketeer Influenced and Corrupt Organizations Act ("RICO") occurs only if the plaintiff's injury results from a corporate defendant's investment or use of specifically identified funds obtained from a pattern of racketeering activity or whether a violation of § 1962(a) can also occur when a corporate defendant uses or invests in its operation funds obtained through a pattern of racketeering activity that injures plaintiff.

2. Whether a violation of § 1962(c) of RICO occurs only if the defendant person conducting the enterprise's affairs through a pattern of racketeering activity enjoys a benefit different from the benefit obtained by the enterprise.

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OPINIONS OF OTHER COURTS

The District Court filed an unpublished Memorandum on September 3, 1992. The Court of Appeals affirmed the District Court's judgment without opinion.

STATEMENT OF JURISDICTION

On April 14, 1993, the Court of Appeals for the Third Circuit affirmed the judgment of the District Court for the Eastern District of Pennsylvania dismissing Petitioners' claims for failure to state a claim upon which relief can be granted. This Court has jurisdiction over this Petition for a Writ of Certiorari pursuant to 28 U.S.C. § 1254.

STATEMENT OF STATUTES INVOLVED

At issue in this case is the correct interpretation of 18 U.S.C. § 1962(a) and 18 U.S.C. § 1962(c). Section 1962(a) provides:

> It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

Section 1962(c) provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

STATEMENT OF THE CASE

Petitioner, Plymouth Healthcare Systems, Inc. (hereinafter referred to as "Systems") is a Pennsylvania corporation engaged in the business of providing managed care mental health services. In late 1986, Systems, through its President, Robert M. Mabel (hereinafter referred to as "Mabel") began negotiations with representatives of Keystone Health Plan East, Inc. (hereinafter referred to as "Keystone"), a newly organized health maintenance organization, concerning the provision of inpatient and outpatient mental health services Keystone planned to offer its members. These negotiations resulted in Keystone entering into a contract with Systems in which Systems agreed to arrange and be financially responsible for mental health services rendered to Keystone members, in exchange for a monthly fee paid by Keystone based upon the number of Keystone members (a "capitation fee")[1] and the right to select the treating mental health facilities and professionals. As its main outpatient

1. The original capitation fee was $1.85 per member per month.

treatment provider, Systems selected Petitioner Plymouth Healthcare Associates (hereinafter referred to as "Associates"), a professional partnership providing outpatient mental health services. Systems entered into a capitation arrangement with Associates in which Associates assumed the financial risk for providing outpatient services to Keystone members.

Systems began to perform under the contract in July, 1987. Between April, 1988 and continuing until December, 1988, at the direction of Respondents G. Fred DiBona, Jr., (hereinafter referred to as "DiBona"), President of Keystone from its inception until April, 1990, John A. Daddis (hereinafter referred to as "Daddis"), Executive Director of Keystone and Thomas Pappalardo (hereinafter referred to as "Pappalardo"), Chief Financial Officer of Keystone, Keystone employees sought information from Systems about its proprietary methods of managing drug abuse treatment programs. Such information is and was of great value to Keystone which was obligated to pay for drug treatment services for its

members.[2] Systems provided this confidential and proprietary information because Keystone's employees led Systems to believe that Keystone would pay Systems an increased capitation fee if Systems assumed the additional responsibility of providing substance abuse treatment to Keystone's members. In November, 1988, again at the request of representatives of Keystone, Systems submitted a detailed proposal setting forth the methods and procedures it would use in providing substance abuse services and requested an additional $.65 per member per month for these services. In fact, during this entire period, it was the intent of DiBona, Daddis and Pappalardo to mislead and deceive Systems into providing these expensive substance abuse services for the same capitation fee Keystone was then paying Systems. Having obtained Systems' valuable methods and procedures of operation by misleading Systems as to its true intentions, Keystone solicited bids from Systems' competitors based upon the information supplied by Systems. In

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2. Although provided by Keystone to its members, Systems was not involved with or financially responsible for the substance abuse (i.e., drug, alcohol, etc.) treatment of Keystone members under the 1987 contract.

soliciting these bids, Keystone did not disclose to the potential bidders its prior contacts with Systems on the subject matter of the bid, the existence of Systems' proposal or the fact that the proposal was intentionally designed to give Systems an advantage in the "competition".

After receiving the requested bids, DiBona spoke with Mabel a number of times and told Mabel that Keystone had received responsible bids for well under $1.90 per member per month. That statement was untrue[3] and was made for the purpose of inducing Mabel to reduce the additional capitation payment demanded by Systems and was made despite the fact that Keystone had calculated the cost of providing these additional services to be $.95 per member per month, and despite the fact, known to Keystone, that Systems had already incurred a substantial loss on its Keystone contract because of Keystone's small membership base. Based upon these representations, as Keystone intended, Mabel agreed that as of July 15, 1989, Systems would provide inpatient

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3. In fact, the lowest bid Keystone received from a responsible bidder was $1.95 per member per month.

and outpatient mental health treatment services and substance abuse services to Keystone members for $1.95 per member per month, or $.10 per member per month more than the capitation payment then being received by Systems to provide mental health treatment services only.

Within months of reaching the new agreement with Systems, Keystone began merger discussions with Delaware Valley HMO, the Independence Blue Cross HMO. In April, 1990, DiBona left Keystone and became President of Independence Blue Cross. At that time, he announced his plans to merge Delaware Valley HMO with Keystone. When Mabel learned in April, 1990 of the impending merger, he became concerned whether or not Systems would retain the contract if there was in fact a merger and so called DiBona in April, 1990 to discuss the matter. During that conversation, DiBona acknowledged that Systems had lost money on its Keystone contract but stated that since he [DiBona] would make the decision on what entity would be granted the mental health contract after any merger, he would award it to Systems and Systems would then have an opportunity to make a profit from the new larger HMO. Based on these representations and its past dealings with

DiBona, Systems invested heavily in new equipment and space so as to be able to serve the increased population of the merged HMO.

By January, 1991, Mabel and others at Systems had become concerned for a variety of reasons, including DiBona's failure to return a number of Mabel's telephone calls, that the assurances DiBona had given Mabel in April, 1990 were no longer valid. In January, 1991, Mabel spoke with another officer of Systems and a partner in Associates, Bernard Garber (hereinafter referred to as "Garber") about these concerns. Garber understood that DiBona was a member of the Board of Directors of Regent National Bank in Philadelphia and so asked an acquaintance of his to speak with David Rink, the President of Regent National Bank, about speaking with DiBona about the Systems' contract. Garber's acquaintance contacted Rink and then advised Garber that before anything could be done, $100,000.00 would have to be deposited in Regent National Bank. Associates borrowed $100,000.00 which it deposited

in Regent Bank on January 24, 1991.[4] Shortly thereafter, Garber's acquaintance was advised that DiBona stood by his earlier assurances to Mabel.

By letter dated March 14, 1991, Keystone invited Systems to submit a bid to be the managed care provider for the merged HMO. In late March, 1991, Systems received notice that its contract with Keystone was being terminated as of July 1, 1991, because of the impending merger.

As a direct result of the fraud committed upon Systems during the negotiations for the 1989 contract, Systems had lost substantial amounts of money on the Keystone contract and Mabel grew concerned that Keystone would use this loss as justification to discontinue its contract with Systems. To lessen this possibility, Mabel considered seeking a financially stronger partner to join with Systems. He and others at Systems questioned DiBona, and Respondents Alan F. Wise (hereinafter referred to as "Wise"), Presi-

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4. Neither Systems nor Associates had any prior banking relationship with Regent National Bank. Associates withdrew the money from the bank in July or August, 1991.

dent of Keystone from approximately April, 1990 to the present and Richard J. Gilfillan, M.D. (hereinafter referred to as "Gilfillan"), Medical Director of Keystone, about the advisability of Systems joining with another company and submitting a joint bid. Each of them stated that Keystone wanted a bid from a single entity only and in fact, would look unfavorably on any type of joint bid. Mabel, therefore, made no effort to have Systems join with a financially stronger partner. These statements when made were false because DiBona had decided sometime in the second half of 1990 to award Systems' contract to TAO, Inc., a wholly owned utilization review subsidiary of Independence Blue Cross in conjunction with a mental health provider.

In early May, 1991, Keystone announced that a joint venture comprised of TAO, Inc. and Bustleton Health Systems, Inc.[5] had been selected as the mental health provider to the merged HMO. One of the reasons given for this selection was TAO's financial

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5. At the time the contract was awarded, Bustleton Health Systems, Inc. was a mental health service provider. TAO, Inc. was a utilization review company without any experience in providing mental health services.

resources. At the time the contract was awarded to TAO/Bustleton, Keystone knew that Systems had incurred substantial losses since 1987 as a result of Keystone's small membership and the inadequate payment for substance abuse services that Keystone had fraudulently induced Systems to accept in 1989. Keystone also knew or should have known that in reliance on the representations made to Systems by DiBona, Wise, Daddis, Gilfillan and Pappalardo in 1990 and 1991, Systems and Associates had made substantial expenditures in anticipation of serving the larger membership of the merged HMO's.

In July, 1991, after Systems' contract terminated, Systems distributed, pro rata, its remaining funds to those providers who were owed money for their treatment of Keystone members and scheduled a meeting for early August, 1991 with those providers who were not satisfied with the prior distribution. Some providers, unhappy with the July distribution by Systems, contacted Keystone and/or billed Keystone members directly for the services they had provided, even though their contracts with Systems prohibited direct billing. Systems believes that DiBona, Wise, Daddis, Gilfillan and Pappalardo thought that any explanation offered by

Systems to the providers as to why Systems was unable to pay them fully would jeopardize the TAO/Bustleton joint venture and its ability to profit from the larger HMO.[6] Therefore, Respondents Dechert Price & Rhoads (hereinafter referred to as "DP&R"), a law firm headquartered in Philadelphia, Pennsylvania and Mark A. Klugheit, Esquire (hereinafter referred to as "Klugheit"), a partner at DP&R were retained by Keystone and instructed to start litigation against Systems, Associates and the individual partners of Associates for the purpose of ending any negotiations between Systems and its providers, to deflect any criticism from Keystone to Systems and/or Associates and to bring about the financial ruin of the individual partners in Associates. On August 8, 1991, Klugheit filed suit in the Philadelphia Court of Common Pleas and conducted the litigation in such a way as to accomplish Keystone's goals.

Petitioners filed a four count Complaint in the District Court

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6. TAO/Bustleton intended to continue to use a substantial number of Systems' providers.

on December 9, 1991.[7] The Complaint alleged, inter alia, that the District Court had jurisdiction pursuant to 18 U.S.C. § 1964 and that Respondents, through two enterprises, Keystone Health Plan East, Inc. and an association in fact formed in 1991 comprised of all the Respondents, injured Petitioners' business through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(a) and (c). Petitioners also alleged under § 1962(d) a conspiracy among the Respondents to violate § 1962(a) and (c) as well as a state law claim for common law fraud.

On December 20, 1991, the district court ordered Petitioners to answer five specific questions about its RICO claim. Petitioners filed their Supplemental Statement answering the district court's inquiries on January 7, 1992.

On January 14, 1992, Respondents filed a Motion to Dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Petitioners filed their answer to the Motion on January 27, 1992.

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7. See A10-A94.

On September 3, 1992, the district court dismissed Petitioner's RICO claims with prejudice, finding that in their § 1962(a) claim, Petitioners had not alleged an investment use injury as required by prior decisions of the Third Circuit and that Petitioners had not properly pled an enterprise distinct from the defendant persons in their § 1962(c) claim. Because Petitioners had not pled either a violation of § 1962(a) or § 1962(c), the district court concluded that Petitioners had not stated a conspiracy under § 1962(d). The district court dismissed the state law claim without prejudice. On October 5, 1992, Petitioners filed a Notice of Appeal and on April 14, 1993, the Third Circuit, without opinion, affirmed the district court's judgment.

ARGUMENT

A. A Person Injured By A Predicate Act That Is Part Of A Pattern Of Racketeering Activity Engaged In By An Enterprise Has Standing To Maintain A Civil RICO Claim Under § 1964(c) Where The Racketeering Income Is Used Or Invested In The Enterprise.

In 1970, Congress enacted the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §§ 1961, et seq. as part of the Organized Crime Control Act of 1970, Pub.L. 91-452, 84 Stat. 922. Although primarily concerned with the ever growing power and influence of organized crime over legitimate business and labor unions, Congress wrote the statute in broad and encompassing language so that its reach would extend well beyond organized crime.[8] To ensure that the statute had the broad reach intended, Congress specifically declared that the statute be liberally con-

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8. Act of October 15, 1970, P.L. 91-452 § 1, 84 Stat. 922.

strued.[9] In addition to RICO's criminal penalties, Congress provided a civil remedy via § 1964(c) to any person whose business or property was injured as a result of a violation of § 1962 of the Act.

During the 1970's, not many civil litigants sought to use the remedy Congress provided in § 1964(c). However, since then civil RICO litigation has exploded and with the explosion have come complaints from many sources that civil RICO is being misused, that it is being used to brand legitimate businesses and business people as racketeers and that it is turning every garden variety tort into a federal case. Congress, despite the hue and cry of many potential RICO defendants, has not amended the statute to restrict its scope. Unfortunately, despite this Court's clear direction, various Courts of Appeal have succeeded in imposing restrictions on its reach by finding within the statute restrictions that just don't exist in the statute and that certainly were not imposed by Congress. In Sedima, S.P.R.L. v. Imrex Co., Inc., 473 U.S. 479 (1985) and again in H.J., Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229

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9. Act of October 15, 1970, P.L. 91-452, Title IX § 904, 84 Stat. 941.

(1989), this Court struck down some of these judicially constructed restrictions to RICO's reach. The instant case presents yet another attempt by a Court of Appeals to read restrictions into the statute not intended or included by Congress.

Petitioners' Complaint alleges that through a pattern of racketeering activity, Keystone, in 1989, fraudulently induced Petitioners to assume from Keystone financial responsibility for Keystone members who sought expensive substance abuse treatment. Petitioners allege that Keystone knew that its costs for providing such services was approximately $.95 per member per month, but through an elaborate scheme using the United States mails, Keystone induced Petitioners to assume financial responsibility for these services for three (3) years for only $.10 per member per month, thereby saving Keystone $.85 per member per month, while Petitioners' business suffered an equal loss. Keystone invested this money in its business and used it to help perpetrate another fraud upon Petitioners in 1991. At that time, Keystone induced Petitioners to continue to perform under its 1989 contract, while still losing money, with the promise of a new and larger contract once Keystone merged with other competing HMO's, even though Keystone

knew at the time it made these representations that Petitioners would not be awarded a contract by the new, larger HMO. Since it engaged in a pattern of racketeering activity and used its ill gotten gain to perpetrate a second fraud against Petitioners, Keystone can be defined as a self-investing corporate racketeer.

According to the Court of Appeals, this conduct does not violate § 1962(a) because Petitioners have not alleged that their injury flowed from Keystone's investment or use of racketeering income. This "investment use" rule has become the majority,[10] but not unanimous[11] position of the Courts of Appeal. This Court, because of the conflict between the Courts of Appeal, the obvious need to bring some order to RICO jurisprudence and the important

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10. See Nugget Hydroelectric, L.P. v. Pacific Gas and Elec., 981 F.2d 429 (9th Cir. 1992), cert. denied, 124 L.Ed. 2d 247 (1993); Parker & Parsley Petroleum Co. v. Dresser Industries, 972 F.2d 580 (5th Cir. 1992); Danielsen v. Burnside-Ott Aviation Training Center, Inc., 941 F.2d 1220 (D.C. Cir. 1991); Ouaknine v. MacFarlane, 897 F.2d 75 (2d Cir. 1990); Craighead v. E. F. Hutton & Co., 899 F.2d 485 (6th Cir. 1990); Grider v. Texas Oil & Gas Corp. 868 F.2d 1147 (10th Cir.), cert. denied, 493 U.S. 820 (1989).

11. See Busby v. Crown Supply, Inc., 896 F.2d 833 (4th Cir. 1990).

questions raised as to the proper interpretation of this widely used federal statute, should grant this Petition for a Writ of Certiorari.

1. Section 1962(a) Is Designed To Protect Legitimate Business From The Unfair Competition Of Enterprises Subsidized By Racketeering Income.

One of Congress' main concerns when it wrote § 1962(a) was to protect the legitimate business and those dependent or involved with it from the unfair competition offered by an enterprise flush with racketeering income. The obvious harm for which Congress sought a remedy was the unfair competitive advantage this illegal subsidy gave the racketeering enterprise. Obviously, it makes no difference how the racketeering enterprise makes use of its subsidy, since it is of no moment whether it uses the money to underbid competitors, pay its utility bills, or provide all expense paid vacations to potential customers. What is important, and what Congress wanted to eradicate by enacting § 1962(a), was the unfair advantage that racketeering income gave the enterprise. See generally Justice Marshall's dissent in Sedima at 510-523. Presumably then, if the enterprise was being subsidized with racketeering

income, the racketeering enterprise's customers, suppliers, competitors and any others doing business with it who were injured by the enterprise's conduct should have standing under § 1964(c) to maintain a civil RICO action against the enterprise predicated upon a violation of § 1962(a). The Third Circuit's investment use rule however, as a practical matter, bars such a claim.[12]

2. The Investment Use Rule Defeats The Purpose Of § 1962(a).

The Third Circuit first adopted the investment use rule in Rose v. Bartle, 871 F.2d 331 (3d Cir. 1989), where the court framed the issue as whether § 1962(a) required an injury from the use or investment of income in an enterprise rather than injury resulting from the predicate acts themselves. The court then acknowledged that district courts across the country were split on the issue but concluded that the majority favored the investment use approach, and so held that "...requiring the allegation of income use or investment injury is consistent with both the literal language

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12. The rule as applied in the Third Circuit is not substantially different than the rule applied in other circuits.

and the fair import of the language [of Section 1962(a)]." Rose at 358, quoting P.M.F. Servs. Inc. v. Grady, 681 F. Supp. 549, 555 (N.D. Ill. 1988).

The Third Circuit addressed the issue again in Banks v. Wolk, 918 F.2d 418 (3d Cir. 1990). While the primary issue in dispute in Banks was the meaning of RICO's pattern requirement, the court raised sua sponte the issue of whether the enterprise and defendant person could be one and the same. In answering that question the court, relying on Rose, held that § 1962(a) required the plaintiff to "...allege that he was injured specifically by the use or investment of income in any enterprise". Id. at 421.

In the next case considered by the Third Circuit, Glessner v. Kenny, 952 F.2d 702 (3d Cir. 1991), plaintiffs asserted a claim under § 1962(a), which the district court dismissed for failure to comply with the investment use rule. On appeal, plaintiffs argued first that the investment use rule was inconsistent with Sedima[13] and alternately, that they had complied with the rule by alleging that

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13. See part "B", infra.

the income from prior fraudulent conduct had been reinvested in the enterprise so as to permit subsequent fraudulent sales. The Third Circuit found this allegation unconvincing because "...if investment injury is construed as broadly as plaintiffs suggest, the distinction between Section 1962(a) and 1962(c) would be blurred." Glessner at 709. As discussed more fully below, the Court of Appeals, under the guise of statutory construction, has read § 1962(a) out of the statute.

Assuming hypothetically that ABC Co., a distributor of widgets, knew that the proceeds from a loan sharking operation conducted by XYZ, Inc. a competing widget distributor, were being invested in XYZ's widget division, the investment use rule would preclude ABC from asserting a § 1962(a) violation unless it could specifically prove that its injury flowed from XYZ's use or investment of the specific dollars obtained from the loan sharking operation. Unless ABC could prove, for example, that its largest customer stopped dealing with it because the customer's president had been bribed with the exact dollars obtained from the loan sharking operation, it could not state a violation of § 1962(a), as interpreted by the Court of Appeals, although the unfair competitive advantage

gained by XYZ through the use of the loan sharking money is exactly the type of conduct Congress intended § 1962(a) to reach. It is clear, however, contrary to the Court of Appeals' interpretation, that Congress intended § 1962(a) to reach this kind of conduct and that § 1962(a) as enacted by Congress only requires ABC to allege that XYZ used or invested the loan sharking money in its business and that ABC's business was thereby injured. Under RICO, no further proof as to the investment or use of the money is required, contrary to the Third Circuit's reasoning in Glessner.

The above discussion assumed that ABC knew of the infusion of the loan sharking money into XYZ. In the real world, however, that is hardly ever the case. Real life companies normally never have any substantial knowledge of the inner workings of their competitors. Generally one company has no ability to ascertain their competitors' sources of revenue and similarly, no ability to trace their competitors' use of revenues. In the real world, only the individuals and businesses who are the targets of self-investing corporate racketeers like Keystone and the unwilling source of its illegal subsidy, know of the RICO defendant's unlawful conduct but cannot, according to the Court of Appeals, maintain a civil RICO

action under § 1964(c) against the self-investing corporate racketeer for a violation of § 1962(a), because they have not been injured by the use or investment of racketeering income.

3. Keystone Has Violated § 1962(a).

The Third Circuit and other proponents of the investment use rule justify their position by claiming that they are only interpreting the clear language of the statute. RICO jurisprudence is, however, replete with references to the statute's complexity including the observation by a Justice of this Court that the statute might, in fact, be unconstitutional because in his opinion, this Court was unable to define adequately the apparently clear and simple word "pattern".[14] The correct meaning and scope of § 1962(a) is not as clear as the Court of Appeals asserts and can only be deduced by reading it in conjunction with the other parts of the section and the clearly stated purposes of the Act: to dry up sources of illegitimate money used to pervert and distort this country's legitimate econo-

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14. See Justice Scalia's dissent in H.J. Inc., 109 S.Ct. at 2908.

my. The only Court of Appeals to have done this correctly is the Fourth Circuit in Busby v. Crown Supply, Inc., supra note 11.

In Busby, as in the case at bar, the defendant was a self-investing corporate racketeer. That is, the corporation both engaged in the racketeering activity that produced the illegal income and then used that money in its business operations. The Fourth Circuit recognized that in this situation, § 1962(a) prohibits a defendant from obtaining money through a pattern of racketeering activity and/or using or investing the money so obtained in its business. The court recognized that the broad "by reason of" language in § 1964(c) encompassed the predicate acts leading up to the investment or use of the racketeering income by the defendant in its business. Busby at 838. Not only does the language of § 1962(a) not preclude such an interpretation, Congress' direction that the statute be liberally construed compels it. The Fourth Circuit identified another reason that supports the rejection of the investment use rule. The Court, pointing out the requirement of § 1962(c) that the defendant person be distinct from the enterprise, found that § 1962(a) was designed to catch self-investing corporate racketeers who would not be liable under § 1962(c), a function

destroyed by the investment use rule.[15]

A clear concern of those Courts of Appeal that have adopted the investment use rule is the reach of § 1962(a) without it.[16] These Courts recognize that without the investment use rule, "legitimate" corporations that are otherwise protected by the defendant/enterprise distinction of § 1962(c) can become defendants in civil RICO suits, further burdening the already overburdened federal court system and in the view of some, further distorting the purposes for which RICO was enacted.

Section 1962(a) prohibits the investment of or use of racketeering income in an enterprise as well as the predicate acts committed to obtain the funds because it turns the enterprise into a predator that injures and destroys all with whom it comes into contact. Like § 1962(b) and 1962(c), the commission of predicate acts by an enterprise and the subsequent use by the enterprise of the racketeering income in its business should give the victim of the predicate

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15. Id. at 838-39.

16. Id. at 839.

acts as well as the enterprise's competitors, employees and others standing under § 1964(c) to maintain a cause of action for any injuries sustained to their business or property.

B. Section 1962 Is Violated By The Commission Of Any Predicate Act That Is Part Of The Pattern Of Racketeering Activity.

As set forth in part A above, Keystone's liability under § 1962(a) as a self-investing corporate racketeer is clear. It is equally clear that the victim of any predicate act has standing under § 1964(c), as long as the proceeds from the racketeering activity are used or invested in an enterprise.

In pertinent part, § 1962 provides:

> a. It shall be unlawful for any person who has received any income ... from a pattern of racketeering activity ... to use or invest ... any part of such income ... in acquisition of any interest in, or the establishment or operation of, any enterprise ...
>
> b. It shall be unlawful for any person through a pattern of racketeering activity ... to acquire or maintain ... any interest in or control of any enterprise ...
>
> c. It shall be unlawful for any person employed by or associated with any enterprise ... to conduct or participate ... in the conduct of such

enterprise's affairs through a pattern of racketeering activity... (emphasis added)

The leading case on what constitutes a violation of § 1962 is the Court's decision in Sedima. The Sedima Court had before it the decision of the Second Circuit Court of Appeals[17], which had held that in order to maintain an action under § 1964(c), a plaintiff needed to allege that the defendant had been previously convicted of a crime arising from the commission of the predicate acts and that the plaintiff had suffered what the Second Circuit called "a racketeering injury".[18] This Court first held that RICO did not require that the defendant be convicted before a civil action could be main-

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17. 741 F.2d 482 (2d Cir. 1984), rev'd, 473 U.S. 479 (1985).

18. The lower court in Sedima discussed the split among the courts regarding these two standing limitations as well as other requirements that some District Courts and Circuit Courts of Appeals had placed on RICO plaintiffs: that a plaintiff show a nexus between the challenged activity and organized crime and that the injury complained of results from "enterprise" involvement in the racketeering, instead of from the racketeering activity. 741 F.2d at 492 and notes 30-35 and 42. Obviously a split among the courts regarding how to interpret RICO is nothing new.

tained. Sedima at 488-493. With reference to the Second Circuit's racketeering injury requirement, the Sedima Court held that "racketeering activity" meant no more and no less than the commission of a predicate act. Id. at 495. The Court then went on to hold:

> Section 1962 in turn makes it unlawful for "any person" - not just mobsters - to use money derived from a pattern of racketeering activity to invest in an enterprise, to acquire control of an enterprise through a pattern of racketeering activity, or to conduct an enterprise through a pattern of racketeering activity. §§ 1962(a)-(c). If the defendant engages in a pattern of racketeering activity in a manner forbidden by these provisions, and the racketeering activities injure the plaintiff in his business or property, the plaintiff has a claim under § 1964(c). There is no room in the statutory language for an additional, amorphous "racketeering injury" requirement.

Ibid.

The Courts of Appeal that have adopted the "investment use rule", as pointed out above, do so based upon what they see as the plain language of § 1962(a). The Second Circuit in adopting the investment use rule observed that under the plain language of this section, a violation of § 1962(a) consists of investing income derived from a pattern of racketeering activity to acquire an interest in, establish, or operate an enterprise; the violation is not estab-

lished by the mere participation in predicate acts of racketeering. Ouaknine v. MacFarlane, supra note 10 at 82. However, the plain language of the statute also supports Petitioners' position.

Each subsection of § 1962, by its plain language, requires some conduct on the part of the defendant in addition to the acts of racketeering. All three subsections are in fact more similar than different in language.[19] Subsection (c) requires the defendant to conduct or participate in the enterprise's affairs and subsection (b) requires the defendant to acquire or maintain an interest or control of the enterprise, while subsection (a) requires the defendant who obtained money from a pattern of racketeering activity to use or invest that money in the establishment or operation of an enterprise. One could argue that the simplicity of the language Congress chose

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19. The three subsections all contain identical phrases, including "It shall be unlawful for any person", "a pattern of racketeering activity or collection of an unlawful debt", and "any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce". § 1962(a)'s thrust is to make it unlawful for a principal to receive income derived from racketeering activity and then invest or use that income in an enterprise, while § 1962(b) is aimed at making the acquisition or maintenance of any interest in an enterprise unlawful, whereas § 1962(c) makes unlawful the conduct or participation in the affairs of such enterprise.

for § 1962 - to conduct or participate, to acquire or maintain and to use or invest - is just coincidental. A more reasonable interpretation is that the language reflects Congress' desire to outlaw the three most common ways that racketeers influence legitimate businesses: by investing money to establish or operate the enterprise, by acquiring or maintaining an interest or control of the enterprise (whether or not by directly purchasing part or all of the business) and by conducting or participating in the enterprise's affairs.

On a clean slate, all three sections of the statute might be read to prohibit only injuries caused once the racketeer had gained some influence over the enterprise and was trying to pervert the enterprise's actions, by investing money or conducting the enterprise's affairs. All three sections might also be read to prohibit the racketeering activity if the result of such activity was the conduct or participation of the racketeer in the enterprise's affairs, or the acquisition or maintenance of an interest in the enterprise by the racketeer or the use or investment by the racketeer in the enterprise of money obtained from the racketeering activity. The language of § 1962 does not support, however, the proposition that a violation of § 1962(b) or (c) occurs if the plaintiff is injured by a predicate

act, but a violation of § 1962(a) occurs only if the plaintiff is injured directly by the use or investment of money obtained from the racketeering activity. Dean Roscoe Pound observed that more than a centry ago, this Court had noted that "It is easy, by very ingenious and astute construction to evade the force of almost any statute, where a court is so disposed ... [By such] a construction [it is possible to] annul [it] and [render] it superfluous and useless." Pillow v. Roberts, 54 U.S. (13 How.) 472, 476 (1852).

> Such an approach to statutory construction, however, carries with it a heavy price. After a lifetime of study of the law, Dean Roscoe Pound concluded that such construction (1) "tend[ed] to bring the law into disrespect; (2) ... subjected [ed] the courts to political pressure; [and] (3) ... invite[d] an arbitrary personal element in judicial administration." III R. Pound, Jurisprudence 488 (1959). It threatened, he found, to make "laws ... worth little" and to "break down" the law.

O'Neill, Functions Of The RICO Enterprise Concept, 64 Notre Dame L. Rev. 646 n. 82 (1989).

In Sedima, a § 1962(c) case, this Court held, in language that applies to each part of § 1962, that a RICO plaintiff had to show only that he was injured by a predicate act in order to state a

claim under § 1964(c). Those Courts of Appeal that have adopted the investment use rule hold however, that the language of § 1962(a) is so different from the language of § 1962(c) as to make this Court's analysis in Sedima irrelevant to § 1962(a). This argument loses its persuasiveness, however, when the holding in American National Bank & Trust Co. of Chicago v. Horoco, Inc., 473 U.S. 606 (1985), decided the same day as Sedima, is also considered.

The question upon which the Court granted certiorari in Haroco was:

> Whether a civil claim for treble damages under the Racketeer Influenced And Corrupt Organizations Act ("RICO") requires that the plaintiff suffer damages by reason of the defendant acquiring, maintaining control or an interest in, or conducting the affairs of an "enterprise" through the commission of statutorily prescribed offenses as opposed to being damaged solely by reason of the defendant's commission of such offenses.

473 U.S. at 608. The Court, in its per curiam opinion, paraphrased the question as:

> ...whether a claim under § 1964(c) requires that the plaintiff have suffered damages by reason of the defendant's violation of § 1962 through the

> prescribed predicate offenses, or whether injury from those offenses alone is sufficient.

Ibid. The Court's answer to the question was:

> The submission that the injury must flow not from the predicate acts themselves but from the fact that they were performed as part of the conduct of an enterprise suffers from the same defects as the amorphous and unfounded restrictions on the RICO private action we rejected in [Sedima].

Id. at 609.

These cases make it clear that for purposes of § 1962, any person injured by an act of racketeering activity committed by the defendants may maintain an action under § 1964(c). This Court has held that it is this conduct, the racketeering activity, that Congress wanted to prohibit. Sedima at 495. However, when considering § 1962(a), proponents of the investment use rule argue that this same conduct does not give rise to a cause of action under § 1964(c) because § 1962(a) clearly and only prohibits investment or use of the proceeds of the pattern of racketeering activity in an enterprise. What is not explained, however, is why a Congress so concerned about infiltration of legitimate businesses by individuals

engaging in multiple racketeering acts (i.e., a pattern of racketeering) that it permitted anyone injured by a predicate act under § 1962(b) or (c) to maintain a cause of action, would have restricted standing under § 1962(a) to only those injured by the use or investment of the racketeering proceeds. That is, why would Congress have precluded those injured by a predicate act under § 1962(a) - the only ones likely to know of the racketeering activity - from maintaining a cause of action under RICO. There is nothing in the statute's legislative history or language that compels such a distinction and such a distinction undercuts the statute's remedial purposes. The holdings of Sedima and Haroco are clear: a person injured by a predicate act can maintain a cause of action for a violation of § 1962(a), § 1962(b) or § 1962(c).

C. Section 1962(c) Does Not Require The Defendant Person To Enjoy A Benefit From His Racketeering Activity Different Than That Enjoyed By The Enterprise.

The district court dismissed Petitioner's claims under § 1962(c) based upon the Third Circuit's opinions in Glessner and Brittingham v. Mobil Corp., 943 F.2d 297 (3d Cir. 1991). In those

cases, building upon its decisions in B.F. Hirsch v. Enright Refining Co., 751 F.2d 628 (3d Cir. 1984) and Petro-Tech, Inc. v. Western Co. of North America, 824 F.2d 1349 (3d Cir. 1987), the Court of Appeals created yet another barrier for one injured by racketeering activity to overcome in order to maintain a civil RICO action under § 1964(c). The Court of Appeals decided that in order to state a violation of § 1962(c), the plaintiff must be able to specify what personal benefit the defendant persons anticipated as a result of their racketeering activity that is different than the benefit accruing to the enterprise. Glessner at 713. Otherwise, according to the Court of Appeals, there is no distinction between the enterprise and the defendant persons. This Court should grant this Petition for Writ of Certiorari as to this question because this holding is contrary to the holdings of the Courts of Appeal in the First and Ninth Circuits and is, yet again, another attempt by a Court of Appeals to give RICO the "pinched construction" this Court condemned in H.J., Inc..[20]

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20. 109 S.Ct. at 2905.

Section 1962(c) as enacted by Congress provides:

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

Nowhere does § 1962(c), or for that matter any part of § 1962, condition the defendant's liability on how he perceives his gain or require that his benefit be objectively different than that of the enterprise. Clearly and unambiguously, the statute says that if the defendant person participates or conducts the affairs of an enterprise through a pattern of racketeering activity, he violates the statute and any person whose business or property is injured by reason of such conduct has a cause of action under § 1964(c). Both the First and Ninth Circuit recognize the import of the obvious meaning of this language.

In Miranda v. Ponce Federal Bank, 948 F.2d 41 (1st Cir. 1991), the court held that "Officers of a corporate enterprise may be personally liable for civil RICO violations if they conducted their employer's affairs through a proscribed pattern of racketeering

activity." Miranda at 45. The First Circuit requires nothing more. In Sever v. Alaska Pulp Corp., 978 F.2d 1529 (9th Cir. 1992), the Ninth Circuit made it clear that the required distinction between "enterprise" and "person" under § 1962(c) was satisfied when the plaintiff named the corporation as the enterprise and the corporation's officers or employees as the persons.[21] Sever at 1534. The Third Circuit, in spite of the obvious meaning of the words used by Congress, has determined that simply permitting a plaintiff to plead that the employees of a corporation control it would lead to absurd results.[22] Therefore, it has crafted the additional requirement that a plaintiff prove that the defendant persons received a benefit from the racketeering activity that is somehow different from the benefit

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21. It is interesting to note, in light of the Third Circuit's "benefit" requirement, that the allegation in Sever was that the defendants interfered with plaintiff's ability to earn a living. Sever at 1533. It would appear that there was no allegation of financial benefit to either the enterprise or the defendants.

22. The court apparently does not feel that § 1962(c)'s pattern requirement is a sufficient restraint on RICO's reach. The Third Circuit's rationale and the rationale advanced by the Second Circuit for its discredited "racketeering injury" requirement are startingly similar. See Sedima at 499.

received by the enterprise. Other than to restrict civil RICO's reach, it is hard to fathom a justification for such a requirement and even more difficult to believe that this was the distinction between "enterprise" and "person" that Congress intended. The Third Circuit's position on which the district court relied when it dismissed Petitioners' Complaint is a perversion of RICO. This Court should grant this Petition to correct the Court of Appeal's unfounded interpretation of RICO.

D. It Is Not The Function Of The Courts To Rewrite A Statute Passed By Congress.

Congress, in attempting to thwart the effects of organized crime in American society created RICO - a statute like none other. It created strange new concepts like "pattern of racketeering activity" coupled with substantial criminal and civil penalties. It wrote the statute broadly and declared that it be liberally construed. Most troubling to some, however, is that in enacting RICO, Congress, intentionally or unintentionally, altered the historic notion of what types of cases are federal cases and what type of cases belong in the state courts. Since the early 1980's, the district courts have been

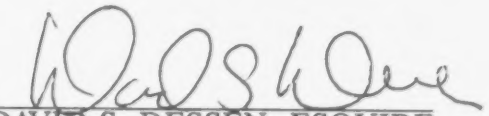
flooded with civil cases raising what many courts believe to be state law claims riding on the coattails of RICO's less than precise language. Surely, say these courts, this is not what Congress intended. And so case by case, court by court, the lower federal judiciary has found a myriad of ways to "amend" the statute. This court, however, in Sedima and H.J., Inc., struck down these court made restrictions and referred those with complaints about the statute to Congress.

As is apparent from the cases cited in this Petition, the lower federal courts are in disarray over the proper interpretation of § 1962. The only issue for most of the Courts of Appeal seems to be which new restriction they can "find" in order to make the statute "less absurd". The time is ripe for this Court, in the exercise of its supervisory powers, to resolve the issues raised by Petitioners. RICO expresses Congress' carefully considered policy in dealing with racketeering activity. It is for the courts to enforce it, not rewrite it. This Court should grant this Petition for Writ of

Certiorari so it can decide if Petitioners have been afforded appropriate judicial interpretation of the law or have been the victims of unacceptable judicial legislation.

Respectfully submitted,

DESSEN, MOSES & SHEINOFF

BY: 

DAVID S. DESSEN, ESQUIRE
Attorney for Petitioners

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 92-1834

PLYMOUTH HEALTHCARE SYSTEMS, INC.;
PLYMOUTH HEALTHCARE ASSOCIATES,
Appellants

v.

KEYSTONE HEALTH PLAN EAST, INC.;
G. FRED DiBONA, JR.; ALAN F. WISE;
JOHN A. DADDIS; RICHARD J. GILFILLAN;
THOMAS PAPPALARDO; DECHERT, PRICE & RHODES;
MARK A. KLUGHEIT,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

D.C. Civil-Action No. 91-07551
District Judge: The Honorable John P. Fullam

Submitted Under Third Circuit Rule 12(6)
April 6, 1993

Before: MANSMANN, ALITO and ALDISERT, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellants, it is

A D J U D G E D and 0 R D E R E D that the judgment of the district court be and is hereby affirmed. Costs taxed against appellants.1

BY THE COURT,

_____
Circuit Judge

ATTEST:

_____
P. Douglas Sisk, Clerk

DATED: APR 14 1993

Costs taxed in favor of the appellees as follows:

Brief..... **$134.40**

Certified as a true copy and issued in lieu of a formal mandate on May 18, 1993

Teste:

Clerk, United States Court of Appeals for the Third Circuit

1. The appellees' motion for sanctions under Fed. R. App. P. 38, 28 U.S.C. § 1927, and the court's inherent authority is denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLYMOUTH HEALTHCARE SYSTEMS, INC., et al., Plaintiff	:	
V.	:	CIVIL ACTION
KEYSTONE HEALTH PLAN EAST, INC., et al., Defendant	:	NO. 91-7551

FULLAM, Sr.J. SEPTEMBER 2, 1992

MEMORANDUM AND ORDER

Beginning in July 1987, plaintiff Plymouth Healthcare Systems ("Systems") was under contract with Defendant Keystone Health Plan ("Keystone"), a health maintenance organization, to provide mental health services to the latter's members for a monthly "capitation fee" per member. Systems, in turn, subcontracted with medical "providers" who were responsible for the actual treatment of the members. In November 1988, Keystone solicited a bid from Systems for providing substance abuse treatment, in addition to the services already contracted for. Systems agreed, in June 1989, to a new contract under which it would receive a slightly higher capitation

rate. Finally, in spring 1990, following Keystone's merger with another health maintenance organization, Keystone initiated a bidding process for provision of mental health services to its enlarged membership, ultimately inviting Systems to submit a bid. The contract was awarded to TAO/Bustleton.

Plaintiffs allege three fraudulent schemes in support of their civil RICO claims. First, in connection with the 1989 contract, they allege that defendants fraudulently obtained valuable proprietary information concerning systems' mental health program and that Keystone fraudulently induced plaintiffs to reduce their bid by misinforming them as to the lowest bid submitted. Second, plaintiffs allege that they were fraudulently assured by defendants that they would be awarded the later contract. Finally, the Keystone and attorney defendants are alleged to have filed a state court lawsuit against plaintiffs for improper purposes.

Plaintiffs were ordered to supplement the complaint with a statement clarifying the basis for their RICO claims. The statement filed is nothing more than a re-tooling of the complaint and provides no supplementary information whatsoever. Plaintiffs' complaint will be dismissed because they have utterly failed to identify an investment injury that would satisfy § 1962(a) or a distinct enterprise that would satisfy § 1962(c), and consequently cannot state a claim under

§ 1962(d).

Plaintiffs concede that an "investment use injury" must be alleged in order to maintain a § 1962(a) claim in this circuit, see Rose v. Bartle, 871 F.2d 331 (3d Cir. 1989), Brittingham v. Mobil Corp., 943 F.2d 297 (3d Cir. 1991), and Glessner v. Kenny, 952 F.2d 702 (3d Cir. 1991), and that they have not pled one. Their § 1962(a) claim must, accordingly, be dismissed.

Plaintiffs also recognize that they must identify culpable "persons" distinct from the alleged "enterprise" in order to maintain a § 1962(c) claim in this circuit. See B.F. Hirsch v. Enright Refining Co., 751 F.2d 628, 633 (3d Cir. 1984); Glessner, 952 F.2d at 710. They contend that they have satisfied this requirement by pleading that Keystone is the enterprise through which the individual Keystone defendants and the attorney defendants conducted their racketeering activities or, alternatively, that all of the defendants constitute an "enterprise in fact."

Although the Third Circuit has recognized that "individual defendants, in contrast to collective entities, are generally distinct from the enterprise through which they act," Brittingham, 943 F.2d at 302, the appeals court has concomitantly stated that a distinction sufficient for § 1962(c) purposes exists only if the individual defendants have used the corporation for their own benefit, thus making the

corporation the "passive" victim of the RICO "persons." As the Glessner court noted, "Such an interpretation avoids the absurd result that a corporation may always be pled to be the enterprise controlled by its employees or officers." 952 F.2d at 713. Plaintiffs, by contrast, have failed to allege that the individual and attorney defendants have benefitted from their alleged racketeering activities in any way that is distinct from the benefits which accrued to Keystone from their acts.

Alternatively, a corporation may be liable as a defendant "person" where the "enterprise" is alleged to be an "association in fact" consisting of the corporation and the individual defendants. Petro-Tech, Inc. v. Western Co., 824 F.2d 1349, 1361 (3d Cir. 1987), but, again, the distinction mandated by Enright exists only if "the defendant corporation had a role in the racketeering activity that was distinct from the undertakings of those acting on its behalf." Brittingham, 943 F.2d at 302. As the appeals court stated:

> [A] § 1962(c) enterprise must be more than an association of individuals or entities conducting the normal affairs of a defendant corporation. A corporation must always act through its employees and agents, and any corporate act will be accomplished through an "association" of these individuals or entities.

Id. at 301. Plaintiffs have failed to allege that Keystone had any active role in the alleged racketeering activities "apart from the activ-

ities of [its] affiliated entities, employees, and agents." See Glessner, 952 F.2d at 712. The fact that defendant DiBona ceased direct employment with Keystone in April 1990 is immaterial, since plaintiffs' cite no authority for the proposition that distinction between one individual defendant and the defendant corporation is sufficient, even though the individual defendant is not alleged to have benefitted separately from the alleged racketeering. In fact, plaintiffs' allegations against DiBona hinge on his being an agent of Keystone; otherwise, DiBona's alleged assurances about the 1991 contract could not be imputed to Keystone. Furthermore, plaintiffs' contention that the attorney defendants must be viewed as distinct from Keystone because pursuing litigation is not one of the "normal affairs" of that corporation is without merit.

Since plaintiffs have failed to state any substantive RICO claim, their § 1962(d) claim must also be dismissed. I decline to exercise jurisdiction as to the pendent state claims. Defendants' motion for sanctions presents a close question, but will be denied.

An order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLYMOUTH HEALTHCARE SYSTEMS, INC., et al., Plaintiff	:	CIVIL ACTION
	:	NO. 91-7551
V.	:	
KEYSTONE HEALTH PLAN EAST, INC., et al., Defendant	:	

ORDER

AND NOW, this 2nd day of September, 1992 it is

ORDERED:

1) Counts I, II, and III of Plaintiffs' Complaint are DISMISSED WITH PREJUDICE; the remainder of the Complaint is DISMISSED WITHOUT PREJUDICE;

2) Defendants' Motion for Sanctions is DENIED; and

3) Defendants' remaining motions are DENIED AS MOOT.

BY THE COURT:

FULLAM, Sr.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PLYMOUTH HEALTHCARE SYSTEMS, INC. 531 West Germantown Pike Plymouth Meeting, PA 19462	
AND	
PLYMOUTH HEALTHCARE ASSOCIATES 580 West Germantown Pike Plymouth Meeting, PA 19462 Plaintiffs	
V.	CIVIL ACTION
KEYSTONE HEALTH PLAN EAST, INC. 3 Bala Plaza East 251 St. Asaphs Road Bala Cynwyd, PA 19004-1410	
AND	
	NO. 91-CV 7551
G. FRED DIBONA, JR. ESQUIRE 1901 Market Street Philadelphia, PA 19103	
AND	
	JURY TRIAL
ALAN F. WISE 1901 Market Street Philadelphia, PA 19103	DEMANDED
AND	
JOHN A. DADDIS	

3 Bala Plaza East
251 St. Asaphs Road
Bala Cynwyd, PA 19004-1410

AND

RICHARD J. GILFILLAN, M.D.
3 Bala Plaza East
251 St. Asaphs Road
Bala Cynwyd, PA 19004-1410

AND

THOMAS PAPPALARDO
3 Bala Plaza East
251 St. Asaphs Road
Bala Cynwyd, PA 19004-1410

AND

DECHERT PRICE & RHOADS
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103-2793

AND

MARK A. KLUGHEIT, ESQUIRE
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103-2793
Defendants

COMPLAINT

PARTIES

1. Plymouth Healthcare Systems, Inc. (hereinafter referred to as "Systems") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with offices at 531 W. Germantown Pike, Plymouth Meeting, Pennsylvania which is in the business of providing managed care mental health and substance abuse services.

2. Plymouth Healthcare Associates (hereinafter referred to as "Associates") is a partnership organized and existing under the laws of the Commonwealth of Pennsylvania with offices at 580 W. Germantown Pike, Plymouth Meeting, Pennsylvania which is in the business of providing outpatient mental health treatment services. Bernard Garber, Ed.D. (hereinafter referred to as "Garber"), is a partner in Associates.

3. Defendant Keystone Health Plan East, Inc. (hereinafter referred to as "Keystone") is a Pennsylvania health maintenance organization corporation organized pursuant to 40 P.S. §§1551, et seq. with offices at 3 Bala Plaza East, Bala Cynwyd, Pennsylvania.

4. Defendant G. Fred DiBona, Esquire (hereinafter re-

ferred to as "DiBona") is an adult individual who at all relevant times was acting within the course and scope of his employment as either chief executive officer of Keystone or President of Independence Blue Cross (hereinafter referred to as "Blue Cross").

5. Defendant Alan F. Wise (hereinafter referred to as "Wise") is an adult individual who at all relevant times was acting within the course and scope of his employment as President and chief executive officer of Keystone.

6. Defendant John A. Daddis (hereafter referred to as "Daddis") is an adult individual who at all relevant times was acting within the course and scope of his employment as executive director and/or chief operating officer of Keystone.

7. Defendant Richard J. Gilfillan, M.D. (hereinafter referred to as "Gilfillan") is an adult individual who at all relevant times was acting within the course and scope of his employment as Vice President for health services at Keystone.

8. Defendant Thomas Pappalardo (hereinafter referred to as "Pappalardo") is an adult individual who at all relevant times was acting within the course and scope of his employment as chief financial officer of Keystone.

9. Defendant Dechert Price and Rhoads (hereinafter referred to as "DP&R") is a Pennsylvania partnership engaged in the

practice of law.

10. Defendant Mark A. Klugheit, Esquire (hereinafter referred to as "Klugheit") is an adult individual and partner in DP&R.

JURISDICTION AND VENUE

11. This Court has jurisdiction over the claims made in Counts I, II and III of this Complaint pursuant to Section 1965 of the Racketeer Influenced and Corrupt Organizations Act (hereinafter referred to as "RICO"), 18 U.S.C. §§1961, et seq. and 28 U.S.C. §1331.

12. Jurisdiction over Count IV of this Complaint arises under 28 U.S.C. §1367 and the principles of pendent jurisdiction.

13. Venue is placed in the Eastern District of Pennsylvania pursuant to 18 U.S.C. §1965(a) and 28 U.S.C. §1391(b) in that all the defendants reside in either Montgomery or Philadelphia counties, which are the locations where the majority of the defendants' wrongful acts occurred.

FACTS

THE ORIGINAL CONTRACT

14. In or about July, 1987, Keystone Ventures, a wholly owned subsidiary of Pennsylvania Blue Shield, began operating a health maintenance organization (hereinafter referred to as "HMO") known as Keystone Health Plan East, Inc. in Philadelphia, Pennsylvania and the surrounding counties.

15. DiBona was the President of Keystone from its inception through May, 1990.

16. In January, 1991, DiBona was a director of the Regent National Bank (hereinafter referred to as "Regent Bank") located in Philadelphia Pennsylvania.

17. From the time it began operations, Keystone was in competition with other HMOs operating in the Philadelphia area, including Delaware Valley HMO (hereinafter referred to as "Delaware Valley"), a wholly owned subsidiary of Blue Cross.

18. The Keystone Plan of Benefits provided mental health and substance abuse treatment services to its members.

19. In late 1986, in anticipation of Keystone beginning operations, Robert Mabel, Ph.D., on behalf of Systems, began negotiations with Leon Cooper, M.D., a representative of Keystone, regarding the terms of a contract in which Systems would provide

managed care for both inpatient and outpatient mental health treatment services to members of Keystone's HMO.

20. In June, 1987, John Daddis was employed by Keystone

as its chief operating officer.

21. On or about July 1, 1987, under the terms of the written three (3) year contract attached hereto as Exhibit "A", Systems began to provide managed care services for mental health treatment of Keystone members.

THE 1989 FRAUD

22. Between July, 1987 and March, 1988, DiBona, Daddis and Pappalardo agreed upon a scheme to fraudulently induce Systems to become financially responsible for a variety of major services that were then Keystone's financial responsibility, including substance abuse treatment services and sleep lab evaluations, as well as certain minor or less expensive services at little or no increase in Keystone's payment to Systems.

23. From April, 1988 to November, 1988, in furtherance of the scheme and artifice to defraud as set forth above, Keystone representatives led Systems to believe that Keystone intended to add

substance abuse treatment services to the existing contract and to increase the capitation rate paid Systems for these additional responsibilities.

24. In furtherance of the scheme set forth above, Keystone used the United States Postal Service to mail to Systems a letter dated April 12, 1988, for the purpose of having Systems divulge to Keystone its method of arranging for substance abuse treatment.

25. By letter addressed to Systems dated April 26, 1988 and deposited in the United States mail, in furtherance of the scheme and artifice to defraud set forth above, Keystone requested that Systems provide it with preliminary information about System's substance abuse program.

26. In furtherance of the scheme set forth above, letters dated July 13, 1988, August 10, 1988 and August 12, 1988 were deposited in the United States mail, addressed to Systems, for the purpose of having Systems provide further information to Keystone about its substance abuse treatment program.

27. Between April, 1988 and November, 1988, at Keystone's further request and without knowledge of Keystone's true intentions, Systems submitted additional information about its substance abuse programs to Keystone.

28. By letter dated August 5, 1988, duly deposited in the

United States mail and addressed to Systems, a copy of which is attached as Exhibit "B", and in furtherance of the scheme set forth above, Keystone notified Systems of its intent to terminate the 1987 contract.

29. In November, 1988, Systems submitted to Keystone a formal proposal to provide managed care services for both mental health and substance abuse treatment services for $2.50 per member per month.

30. In February, 1989, DiBona, Daddis and Pappalardo, in furtherance of the scheme set forth above, caused Keystone to deposit in the United States mail, solicitations for bids for the provision of mental health and substance abuse services to Keystone members from Systems' competitors.

31. Keystone fraudulently did not disclose to these prospective bidders that in order to ensure Systems' selection for this contract, it had intentionally designed the Request for Proposal to match the proposal previously submitted by Systems in November, 1988. See Exhibit "C", attached.

32. Keystone calculated the costs of providing the required services to be approximately $2.80 per member per month.

33. Systems calculated the cost of services to be $2.91 per member per month, although it was willing to provide the services to

Keystone for $2.50 per member per month because of the anticipated growth of Keystone's membership.

34. Between May, 1989 and June, 1989, Mabel and DiBona had a number of telephone conversations regarding the capitation rate that Keystone would pay for the managed care services to be provided by Systems under the new contract.

35. During the course of the said conversations, DiBona told Mabel that Keystone had received responsible bids for well under $1.90 per member per month and that if Systems wanted the new contract, it would have to meet this price.

36. DiBona made these statements even though he knew that Systems' actual costs would be at least $2.50 per member per month and that the lowest price received by Keystone from a responsible bidder was $1.95 per member per month.

37. In early June, 1989, Mabel, on behalf of Systems, unaware that DiBona would not select another provider and faced with a substantial loss if the contract were not renewed, agreed to an initial capitation rate of $1.95 per member per month to provide managed care for both mental health and substance abuse treatment services.

38. This $1.95 per member per month capitation rate was only $.10 per member per month more than Systems had been paid

to provide managed care services for mental health treatment alone.

39. As a direct and proximate result of the above described scheme, Systems was unable to pay all the expenses it incurred in providing the managed care services called for in the 1989 contract.

THE 1991 FRAUD

40. Within months of reaching this Agreement with Systems, Keystone began merger discussions with Delaware Valley.

41. In April, 1990, Blue Cross announced that DiBona had been selected to be its new president, replacing David S. Markson who had resigned in October, 1989.

42. In April, 1990, at the time his new position with Blue Cross was announced, DiBona stated his intention to merge Keystone and Delaware Valley.

43. In April, 1990, shortly after the announcement of DiBona's selection as President of Blue Cross, Mabel spoke to DiBona about Systems' contract with Keystone.

44. DiBona told Mabel during that conversation that he [DiBona] would ultimately make the decision about Systems' contract with Keystone after the merger occurred.

45. During that April, 1990 telephone call, DiBona acknowledged that Systems had lost money on the Keystone contract up to that point in time but assured Mabel that Systems would not only retain its contract with Keystone, but would be able to make a profit from its new contract with the larger merged HMO.

46. Upon information and belief, by the second half of 1990, the decision to merge Keystone and Delaware Valley had been made and DiBona had decided that TAO, Inc., a wholly owned subsidiary of Blue Cross, would be given the Systems' contract.

47. Upon information and belief, DiBona knew that whereas Systems had lost money because of Keystone's small subscriber base and the unreasonably low capitation rate forced upon Systems in June, 1989, TAO would be highly profitable because of the larger subscriber base of the merged HMO and a more realistic capitation rate.

48. During the remainder of 1990, Mabel and others associated with Systems were told by various individuals that DiBona would ensure that Systems' contract with Keystone would continue after any merger of Keystone and Delaware Valley even though DiBona did not return a number of calls made by Mabel.

49. Systems, in good faith and based upon its past dealings

with DiBona and Keystone, relied on these assurances to its detriment when it spent approximately $20,000.00 to upgrade its computer system, arranged for Plymouth Healthcare Associates (Systems' main outpatient provider) to obtain additional office space in Havertown, Pennsylvania, Bala Cynwyd, Pennsylvania as well as Center City, Northeast and South Philadelphia and devoted increased time to recruiting additional members for its provider network.

50. Sometime between January, 1991 and March 1991, Wise assumed the duties of President of Keystone and became part of the scheme to defraud Systems.

51. By January, 1991, Mabel and others at Systems became concerned that DiBona, Wise, Gilfillan and Pappalardo had decided to award the contract to another company.

52. In or about January, 1991, in an effort to determine if Systems should still rely on the assurances DiBona gave Mabel in 1990, Garber asked an acquaintance to ask David Rink, the President of Regent Bank, to speak with DiBona about the matter.

53. Rink advised Garber's acquaintance that nothing could be done unless $100,000.00 was deposited in Regent Bank.

54. On or about January 24, 1991, Associates deposited $100,000.00 in Regent Bank as demanded.

55. Shortly thereafter, Garber's acquaintance was advised

that DiBona stood by his earlier assurances to Mabel.

56. In furtherance of the scheme to defraud Systems set forth above, Keystone deposited in the United States mail a letter dated March 14, 1991 addressed to Systems, inviting Systems to submit a bid to be the managed care provider for the merged HMOs.

57. Keystone advised Systems by letter dated March 27, 1991, deposited in the United States mail, that Systems' contract with Keystone was terminated because of the pending merger of Keystone and Delaware Valley.

58. Recognizing the fact that the financial risk to the managed care provider under the new contract was substantially greater then that undertaken by Systems in its 1989 contract with Keystone, Mabel and other representatives of Systems spoke with DiBona, Wise and Gilfillan about the advisability of associating with a financially stronger company.

59. DiBona, Wise and Gilfillan, as part of the scheme and artifice to defraud set forth above and knowing the same to be false, uniformly told Systems and its representatives that Keystone was only interested in entering into a contract with a single provider and that Systems should, therefore, not submit a joint bid.

60. DiBona, Wise and Gilfillan made these assurances with the intention that Systems believe them and act upon them,

despite the fact that DiBona and the others knew them to be false.

61. Relying on these false representations, Mabel made no attempt to form a joint venture with any other company.

62. Mabel, in addition to being President of Systems, was an inactive partner in Associates.

63. Mabel remained concerned with the size of the new contract and so discussed with the other partners of Associates the losses Systems had sustained in its dealings with the Keystone contract and his concern over how Keystone would react to Systems' financial condition.

64. As a result of these discussions, it was decided that Associates, a financially stronger company than Systems, would submit the bid for the 1991 merged HMO contract.

65. Associates submitted its bid to Keystone for the new contract in a timely fashion.

66. The bid submitted by Associates was not accepted because of the above-described scheme to award the contract to TAO, Inc.

67. Pursuant to the scheme and artifice to defraud set forth above, the new contract was awarded in early May, 1991, to the joint venture TAO/Bustleton, composed of TAO, Inc., a utilization review company that is a wholly owned subsidiary of Blue Cross, and Bus-

tleton Health Systems, Inc., a mental health service provider.

68. DiBona, Wise, Daddis, Gilfillan and Pappalardo justified the award of the contract to TAO/Bustleton because of the extent of TAO's financial resources, which included those of its parent, Independence Blue Cross.

69. In May, 1991, when Keystone awarded the contract to TAO/Bustleton, it knew or should have known that:

a. Systems had lost substantial amounts of money since 1987 in servicing its contract with Keystone, just as Keystone had lost substantial amounts of money in operating its HMO.

b. Providers under contract to Systems had provided all of the services required under the earlier contracts to Keystone members.

c. Systems, at Keystone's request, had accepted financial responsibility for certain cases for which it was not contractually obligated.

d. Systems had made substantial expenditures based upon assurances from DiBona, Wise, Gilfillan and Daddis.

e. The capitation rate Keystone had forced upon Systems in the 1989 contract was far below the cost at which any company could arrange for provision of the required services.

f. Systems had unpaid bills from providers.

70. Systems continued to provide services to Keystone members under the 1989 contract until June 30, 1991.

71. In mid-July, 1991, Systems notified its providers that its contract with Keystone had been terminated and that it then had sufficient cash to pay approximately nine percent (9%) of the outstanding provider bills, which money Systems then distributed pro rata.

72. Between mid-July, 1991 and August 5, 1991, representatives of Systems spoke with a number of providers about a resolution of their outstanding claims.

73. Systems scheduled a meeting at its attorney's office for August 5, 1991, to further discuss this issue with any interested providers.

74. Upon information and belief, some providers contacted Keystone about their claims outstanding with Systems.

75. Upon information and belief, DiBona, Wise, Daddis, Gilfillan and Pappalardo decided that the profit to be made by TAO would be in jeopardy if Systems and/or Associates were allowed to explain to the providers the true reasons that their bills were unpaid.

76. DiBona, Wise, Daddis, Gilfillan and Pappalardo therefore decided to bring a lawsuit in Keystone's name that would,

among other things, make any negotiations with the providers by Systems and/or Associates impossible, deflect any criticism of Keystone to Systems and/or Associates and bring about the financial ruin of the partners in Associates.

77. On or about August 8, 1991, Klugheit, acting in the course and scope of his employment at DP&R, and in furtherance of the above-described scheme, instituted a civil action in the Court of Common Pleas of Philadelphia County at August Term, 1991, No. 929 against Systems, Plymouth Healthcare Associates, Bernard Garber, Ed.D., Robert Mabel, Ph.D., Carl Sonder, M.D. and Daniel Smaltini. A copy of this Complaint is attached hereto as Exhibit "D".

78. Upon information and belief, the lawsuit was filed to convince Systems' providers that Keystone was attempting to secure payment for those providers from Systems and to deflect any demand by the providers that Keystone satisfy their unpaid bills.

79. The claims set forth against Systems, Associates and the individual defendants in the civil action are untrue and made only for the purposes set forth above.

80. DiBona, Wise, Daddis, Gilfillan, Pappalardo, DP&R and Klugheit further agreed that Klugheit would conduct the litigation in such a way as to ensure that Systems and Associates would not be

able to remain in business and the individual defendants would be financially ruined.

81. Upon information and belief, DiBona, Wise, Daddis, Gilfillan, Pappalardo, DP&R and Klugheit believed that once Systems, Associates and the individual defendants were financially ruined, these defendants would be unable to assert any claims against Keystone based upon Keystone's fraudulent dealing with them which could have damaged TAO's profitability.

RICO VIOLATIONS

82. As set forth above, the defendants, jointly and severally, knowingly and willfully devised or intended to devise a scheme and artifice to defraud, or to obtain money or property of Systems and/or Associates by means of false and fraudulent pretenses, representations and promises, and in furtherance thereof used and caused to be used the United States mail in violation of 18 U.S.C. §1341. The defendants participated in the scheme and artifice to defraud with knowledge of its fraudulent nature and with specific intent to defraud Systems and/or Associates.

83. The knowing and intentional failure of DiBona, Wise, Daddis, Gilfillan, Pappalardo, DP&R and Klugheit, jointly and

severally, to disclose material facts and their deliberate misrepresentation of material facts in letters and other documents sent through the United States mail in conjunction with the 1989 fraud and 1991 fraud constitute repeated violations of 18 U.S.C. §1341 relating to mail fraud and further constitute acts of "racketeering activity" as that term is defined in 18 U.S.C. §1961(l).

84. Keystone and DP&R are entities capable of holding legal or beneficial interest in property, and they, DiBona, Wise, Daddis, Gilfillan, Pappalardo and Klugheit are "persons" as that term is defined in 18 U.S.C. §1961(3).

85. Keystone is a health maintenance organization corporation and an "enterprise" as that term is defined in 18 U.S.C. §1961(4).

86. All the defendants were associated in fact through their continuing efforts in the 1991 fraud and such association in fact constitutes an "enterprise" as that term is defined in 18 U.S.C. §1961(4), which has benefited from the pattern of racketeering activity described herein.

87. The mail frauds perpetrated upon Systems and Associates by the defendants spanned thirty-nine (39) months.

88. In addition to the frauds perpetrated upon Systems and Associates by all the defendants, DiBona, Daddis, Gilfillan and

Pappalardo perpetrated a fraud upon all the bidders for the 1989 contract.

89. Upon information and belief, the defendants employ fraud as a regular way of doing business.

90. Based upon the defendants' past conduct and the fact that most of the defendants are still in control of Keystone, upon information and belief, there is a substantial likelihood that their fraudulent conduct will continue in the future.

91. The actions described in paragraphs 87 through 90 constitute a "pattern of racketeering activity" consisting of more than two acts of racketeering activity which occurred after the effective date of 18 U.S.C. §§1961, et seq. and the last of which is within ten years after the commission of a prior act of racketeering activity within the meaning of 18 U.S.C. §1961(5).

COUNT I - RICO
18 U.S.C. §1962(a)

92. Plaintiffs hereby incorporate paragraphs 1 through 91, inclusive as though the same were set forth at length.

93. Keystone, DiBona, Wise, Daddis, Gilfillan, Pappalardo, DP&R and Klugheit, individually and/or in conspiracy with each other, derived or caused to be derived income from the pattern of

racketeering activity as described in this Complaint, in which they participated as principals or as aiders and abettors within the meaning of 18 U.S.C. §2, which income was used or invested, directly or indirectly, in the operation of each of the enterprises, the activities of which affect interstate commerce, in violation of 18 U.S.C. §1962(a).

94. As a direct and proximate result of the foregoing violations of 18 U.S.C. §1962(a) by the defendants, Systems has sustained injury to its business and property in an undetermined amount believed to be in excess of Seven Hundred Thousand Dollars ($700,000.00), plus interest, and will continue to suffer damages for which the defendants are liable.

95. The conduct of the defendants as set forth above was willful, wanton and outrageous so as to entitle Systems to punitive damages.

96. As a direct and proximate result of the foregoing violations of 18 U.S.C. §1962(a) by the defendants, Associates has sustained injury to its business and property in an undetermined amount believed to be in excess of One Million Dollars ($1,000,000.00), plus interest, and will continue to suffer damages for which the defendants are liable.

97. The conduct of the defendants as set forth above was

willful, wanton and outrageous so as to entitle Associates to punitive damages.

WHEREFORE, Plaintiff Plymouth Healthcare Systems, Inc. demands judgment against the defendants, jointly and severally, for compensatory damages in an undetermined amount believed to be in excess of Seven Hundred Thousand Dollars ($700,000.00), plus interest, which sum under the provisions of 18 U.S.C. §1964(c) is to be trebled, plus attorney's fees and costs. Plymouth Healthcare Systems, Inc. further demands punitive damages in an amount in excess of Five Million Dollars ($5,000,000.00).

Plaintiff Plymouth Healthcare Associates demands judgment against the defendants, jointly and severally, for compensatory damages in an undetermined amount believed to be in excess of One Million Dollars ($1,000,000.00), plus interest, which sum under the provisions of 18 U.S.C. §1964(c) is to be trebled, plus attorney's fees and costs. Plymouth Healthcare Associates further demands punitive damages in an amount in excess of Five Million Dollars ($5,000,000.00).

COUNT II - RICO
18 U.S.C. §1962(c)

98. Plaintiffs hereby incorporate paragraphs 1 through 97,

inclusive as though the same were set forth at length.

99. DiBona, Wise, Daddis, Gilfillan, Pappalardo, DP&R and Klugheit, individually and/or in conspiracy with each other, conducted and/or participated, directly or indirectly, in the affairs or conduct of Keystone, whose activities affect interstate commerce, through the above-described pattern of racketeering activity in violation of 18 U.S.C. §1962(c).

100. As a direct and proximate result of the foregoing violations of 18 U.S.C. §1962(c) by the defendants, Systems has sustained injury to its business and property in an undetermined amount believed to be in excess of Seven Hundred Thousand Dollars ($700,000.00), plus interest, and will continue to suffer damages for which the defendants are liable.

101. The conduct of the defendants as set forth above was willful, wanton and outrageous so as to entitle Systems to punitive damages.

102. As a direct and proximate result of the foregoing violations of 18 U.S.C. §1962(c) by the defendants, Associates has sustained injury to its business and property in an undetermined amount believed to be in excess of One Million Dollars ($1,000,000.00), plus interest, and will continue to suffer damages for which the defendants are liable.

103. The conduct of the defendants as set forth above was willful, wanton and outrageous so as to entitle Associates to punitive damages.

WHEREFORE, Plaintiff Plymouth Healthcare Systems, Inc. demands judgment against the defendants, jointly and severally, for compensatory damages in an undetermined amount believed to be in excess of Seven Hundred Thousand Dollars ($700,000.00), plus interest, which sum under the provisions of 18 U.S.C. §1964(c) is to be trebled, plus attorney's fees and costs. Plymouth Healthcare Systems, Inc. further demands punitive damages in an amount in excess of Five Million Dollars ($5,000,000.00).

Plaintiff Plymouth Healthcare Associates demands judgment against the defendants, jointly and severally, for compensatory damages in an undetermined amount believed to be in excess of One Million Dollars ($1,000,000.00), plus interest, which sum under the provisions of 18 U.S.C. §1964(c) is to be trebled, plus attorney's fees and costs. Plymouth Healthcare Associates further demands punitive damages in an amount in excess of Five Million Dollars ($5,000,000.00).

COUNT III - RICO
18 U.S.C. §1962(d)

104. Plaintiffs hereby incorporate paragraphs 1 through 103, inclusive as though the same were set forth at length.

105. Keystone, DiBona, Wise, Daddis, Gilfillan, Pappalardo, DP&R, Klugheit and others conspired, combined, confederated and agreed with each other to violate 18 U.S.C. §1962(a) and (c), as set forth above, in violation of 18 U.S.C. §1962(d).

106. It was the plan, purpose and object of the conspiracy set forth above to injure Systems and Associates in their business and property.

107. In furtherance of the conspiracy, the defendants committed overt acts as described above.

108. As a direct and proximate result of the foregoing violations of 18 U.S.C. §1962(d) by the defendants, Systems has sustained injury to its business and property in an undetermined amount believed to be in excess of Seven Hundred Thousand Dollars ($700,000.00), plus interest, and will continue to suffer damages for which the defendants are liable.

109. The conduct of the defendants as set forth above was willful, wanton and outrageous so as to entitle Systems to punitive damages.

110. As a direct and proximate result of the foregoing violations of 18 U.S.C. §1962(d) by the defendants, Associates has

sustained injury to its business and property in an undetermined amount believed to be in excess of One Million Dollars ($1,000,000.00), plus interest, and will continue to suffer damages for which the defendants are liable.

111. The conduct of the defendants as set forth above was willful, wanton and outrageous so as to entitle Associates to punitive damages.

WHEREFORE, Plaintiff Plymouth Healthcare Systems, Inc. demands judgment against the defendants, jointly and severally, for compensatory damages in an undetermined amount believed to be in excess of Seven Hundred Thousand Dollars ($700,000.00), plus interest, which sum under the provisions of 18 U.S.C. §1964(c) is to be trebled, plus attorney's fees and costs. Plymouth Healthcare Systems, Inc. further demands punitive damages in an amount in excess of Five Million Dollars ($5,000,000.00).

Plaintiff Plymouth Healthcare Associates demands judgment against the defendants, jointly and severally, for compensatory damages in an undetermined amount believed to be in excess of One Million Dollars ($1,000,000.00), plus interest, which sum under the provisions of 18 U.S.C. §1964(c) is to be trebled, plus attorney's fees and costs. Plymouth Healthcare Associates further demands

punitive damages in an amount in excess of Five Million Dollars ($5,000,000.00).

COUNT IV - FRAUD AND MISREPRESENTATION

112. Plaintiffs hereby incorporate paragraphs 1 through 111, inclusive as though the same were set forth at length.

113. As set forth above, the defendants, individually and in conspiracy with each other, have committed fraud against Systems and Associates when they intentionally and with reckless disregard for the truth made material misrepresentations and/or omitted disclosing relevant information to representatives of Systems and Associates.

114. The defendants' intentional, willful and malicious misrepresentations and omissions included, among other things, the following:

a. Defendants DiBona, Daddis, and Pappalardo caused Systems to believe that Systems would be paid a reasonable additional capitation fee for arranging for substance abuse services for Keystone members, when in fact, they never intended to do so.

b. DiBona told Mabel that Keystone had received bids for well under $1.90 per member per month, which was untrue,

in order to induce Systems to agree to accept $.10 per member per month for substance abuse services.

c. DiBona told Mabel, in April, 1990, that he would ensure that Systems would retain its contract with Keystone if Keystone and Delaware Valley merged, when in fact, he never intended to do so.

d. Defendants Wise and Gilfillan told Systems and Associates that they should not seek a financially stronger company to join with in submitting a bid to the merged HMO, when in fact they knew that Systems and/or Associates' bid would be rejected because of the financial condition of the companies.

115. Systems and Associates relied to their detriment on the defendants' material misrepresentations and omissions and were deceived by the defendants' fraudulent conduct. As a result of the defendants' fraudulent actions, Systems and Associates were fraudulently induced and coerced, among other things, to:

a. Accept $.10 per member per month in exchange for arranging substance abuse services for Keystone's members.

b. Invest approximately Twenty Thousand Dollars ($20,000.00) for additional computer capability in anticipation of the larger member base of the merged HMOs.

c. Lease additional office space for the use of

Associates' therapists in anticipation of the larger member base of the merged HMOs.

d. Expend considerable time and money increasing the size of the provider network for Keystone members.

116. Had Systems and/or Associates known of the material falsity of the defendants' misrepresentations, the defendants' material omissions and other fraudulent conduct, they would not have done those things set forth in paragraph 115 above.

117. As a direct and proximate result of the fraud committed against Systems by the defendants, Systems has suffered damages in excess of Twenty Thousand Dollars ($20,000.00) and will continue to suffer damages for which the defendants are liable.

118. The conduct of the defendants as set forth above, was willful, wanton and outrageous so as to entitle Systems to punitive damages in excess of One Million Dollars ($1,000,000.00).

119. As a direct and proximate result of the fraud committed against Associates by the defendants, Associates has suffered damages in excess of Twenty Thousand Dollars ($20,000.00) and will continue to suffer damages for which the defendants are liable.

120. The conduct of the defendants as set forth above, was willful, wanton and outrageous so as to entitle Associates to punitive damages in excess of One Million Dollars ($1,000,000.00).

WHEREFORE, Plaintiff Plymouth Healthcare Systems, Inc. demands judgment against the defendants, jointly and severally, for compensatory damages in an amount in excess of Twenty Thousand Dollars ($20,000.00) plus costs of suit and punitive damages in an amount in excess of One Million Dollars ($1,000,000.00).

Plaintiff Plymouth Healthcare Associates demands judgment against the defendants, jointly and severally, for compensatory damages in an amount in excess of Twenty Thousand Dollars ($20,000.00) plus .PAcosts of suit and punitive damages in an amount in excess of One Million Dollars ($1,000,000.00).

DESSEN, MOSES & SHEINOFF

By: _____
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AGREEMENT BETWEEN KEYSTONE HEALTH PLAN EAST AND PLYMOUTH HEALTHCARE SYSTEMS, INC. WITH RESPECT TO THE DELIVERY OF MENTAL HEALTH SERVICES

THIS AGREEMENT is effective on July 1, 1987 by and between Keystone Health Plan East ("KHP") and Plymouth Healthcare Systems, Inc. ("Systems").

PURPOSE

1. KHP is organized as a Pennsylvania health maintenance organization under the Pennsylvania State Health Maintenance Organization Act, as amended, 40 P.S. Section 1551 et seq. ("HMO Act").

2. Systems is organized as a Pennsylvania business corporation to provide management and marketing services in connection with the delivery by others of mental health services. Systems independently contracts with psychiatrists, psychologists, psychiatric nurses, psychiatric social workers and other appropriately qualified professionals, all licensed as appropriate by the Commonwealth of Pennsylvania, to provide mental health care.

3. KHP and Systems desire to enter into an agreement to arrange for the provision of Mental Health Services to individuals enrolled in KHP (the "Members").

NOW, THEREFORE, intending to be legally bound hereby, and in consideration of the mutual promises stated herein, KHP and Systems agree as follows:

1. DEFINITIONS

1.1 Ancillary Services shall mean health care services provided through contracts with KHP, or thorough an organization under contract with KHP, with licensed health care providers other than physicians, hospitals and other Institutional Providers, either as individuals or through organized entities including, but not necessarily limited to, ambulance service, home health service, medical social services, physical therapy, and other preventive health services.

1.2 Copayment shall mean the amount required to be paid by a Member in connection with the provision of Medically Necessary Covered Services set forth in the Subscriber Agreement, including Mental Health Services.

1.3 Covered Services shall mean those services described in the agreement(s) entered into by KHP and employer or other groups, or individuals or their agents or representatives, specifying the terms and conditions under which Medically Necessary services, including the Mental Health Services described in Attachment B to this Agreement, are to be provided to its Members by KHP.

1.4 Emergency shall mean an accidental injury or the sudden and unexpected onset of a condition which poses a significant jeopardy to the Member's health, requiring immediate medical or surgical care. A mental health Emergency shall be defined as when a patient exhibits a clear and present danger of bodily harm to self or others. Emergency Services shall mean the provision of Medically Necessary Mental Health Services in an Emergency.

1.4.1 Emergency Stabilization shall mean where it has been determined by a physician in an emergency room that a patient has been medically stabilized following emergency treatment and requires disposition to another treatment setting.

1.5 Institutional Services shall mean inpatient or outpatient services provided by any licensed facility other than a general acute care hospital. Institutional services include, but are not necessarily limited to, services provided by psychiatric hospitals, rehabilitation hospitals and skilled nursing facilities.

1.6 Medically Necessary shall mean that the services and items provided by a Participating Physician or Provider are required, in the opinion of KHP, to diagnose or treat a Member's illness or injury.

1.7 Member shall mean an individual who has entered into a contract, or on whose behalf a contract has been entered into, with KHP for the provision of Medically Necessary Covered Services, and his or her enrolled dependents, each of whom has selected or been assigned to a Primary Care Physician. A Member shall be issued an identification card by KHP.

1.8 Mental Health Services shall mean the services listed on Attachment B to this Agreement. These services do not include any substance abuse services.

1.9 Participating Physician shall mean an M.D. or D.O. with an unrestricted license to practice in Pennsylvania who is under contract with KHP, or with an organization which is under contract with KHP, to participate as a provider of certain Medically Necessary Covered Services, and who is a member in good standing of the medical staff of at least one of the hospitals under contract with KHP. A Participating Physician shall be classified as a:

1.9.1 Primary Care Physician, which shall mean a Participating Physician who agrees to provide primary physician services to Members and assume primary responsibility for coordinating the overall health care, including making specialist and other referrals, of Members who have selected or been assigned to such Physicians as their Primary Care Physicians.

1.9.2 Specialist Physician, which shall mean a Participating Physician who agrees to provide referral and specialty physician services to Members upon referral by a Primary Care Physician and shall include Board Certified psychiatrists. Systems will offer to KHP Participating Psychiatrists the opportunity to join and participate in Systems' network provided they meet Systems' quality assurance standards.

1.10 Participating Provider shall mean any provider of Ancillary Services, hospital services, or Institutional Services who has signed as agreement with KHP, or with an organization under

contract with KHP, including Systems. The term shall include Participating Psychologists, Psychiatric Nurses and Psychiatric Social Workers, all of whom shall maintain in effect appropriate licenses from the Commonwealth of Pennsylvania. Systems will offer to KHP Participating Providers the opportunity to join and participate in Systems' network provided they meet Systems' quality assurance standards.

1.11 Participating Psychologists shall mean a licensed psychologist with an unrestricted license to practice in Pennsylvania who is under contract with KHP, or with an organization which is under contract with KHP including Systems, to participate as a provider of certain Medically Necessary Covered Mental health Services.

1.12 Psychiatric Hospital Services shall mean inpatient or outpatient hospital services made available by a licensed psychiatric hospital or a general acute care hospital which makes available psychiatric services, whether in a distinct part unit or not, which has an agreement with KHP or with Systems, (all "Psychiatric Hospital").

1.13 Prepaid Program shall mean the health maintenance organization program established by KHP which complies with all applicable requirements of the HMO Act.

1.14 Service Area shall mean the geographic area, designated from time to time specifically by KHP for this Agreement, in which KHP is providing Medically Necessary Covered Services to Members.

1.15 Utilization/Quality/Peer Review shall mean the systems established by KHP or an organization under contract with KHP subject to review and oversight by KHP, which provide for adherence to KHP's established Utilization/Quality/Peer Review standards. Such systems include, but are not necessarily limited to, monitoring the delivery of health care services with respect to their quality, cost, effectiveness, and utilization as ordered and rendered by Participating Physicians and Providers, and implementing corrective actions determined to be necessary and appropriate by KHP.

2. ENGAGEMENT

Systems will make available to KHP, for the use and benefit of the Members, Covered Mental Health Services which are authorized by a KHP Primary Care Physician as Medically Necessary for the care of a Member. It is hereby acknowledged by KHP that Systems is not itself a licensed provider of mental health services; Systems shall arrange for the provision of such services by duly licensed and qualified providers and provide management, marketing and other ancillary non-professional services in connection with the provision of mental health services by others.

3. TERM AND TERMINATION

3.1 Initial Term and Renewal. This Agreement shall take effect on the date first written above and shall continue in effect for an initial term of three (3) years, and then shall renew automatically for additional one (1) year terms thereafter, all unless terminated as provided in paragraph 3.2.

3.2 Termination

3.2.1 General Termination. This Agreement may be terminated at any time by KHP or Systems giving written notice to the other at least one hundred and eighty days prior to the effective termination date. This Agreement also may be terminated for reasons given in other provisions of this Agreement upon the terms provided for in those provisions.

3.2.2 Termination for Cause. This Agreement may be terminated immediately for cause if any of the following occur:

(i) In the event of a breach, or of failure to perform, by either party according to the terms of this Agreement, it may be terminated by written notice given by the other party to the breaching or nonperforming party at least ninety days prior to the proposed termination date. The party alleged to have breached or nonperformed shall have thirty days from receipt of that notice to cure the breach or nonperformance, and if such cure is undertaken to the satisfaction of the other party, this Agreement shall continue in full force and effect.

(ii) Either party may terminate this Agreement upon immediate written notice to the other if one party files a petition in bankruptcy or is adjudicated bankrupt, is subject to any proceeding

in bankruptcy court for reorganization or rearrangement of its financial affairs, has a receiver of its assets or property appointed, or makes a general assignment for the benefit of creditors.

3.2.3 Continuing Obligations after Termination.

(i) Termination of this Agreement for any reason shall not release either KHP or Systems of its obligation to make payments accrued to Systems, Participating Physicians, Providers or KHP in connection with the provision of Medically Necessary Covered Services.

(ii) In the event of the insolvency or other inability of KHP to pay Systems, the obligation of Systems to continue arranging for the provision of Medically Necessary Covered Services to persons receiving inpatient care shall continue to their discharge from inpatient care.

(iii) Upon termination of this Agreement for any reason, at KHP's option, Systems shall continue to arrange for the provision of Medically Necessary Covered Services until the renewal or expiration date of any agreement between KHP and an employer who offers KHP's Prepaid Program, if such agreement was entered into prior to the termination date of this Agreement.

3.2.4 Cooperation After Termination. In the event this Agreement is terminated, Systems shall cooperate with KHP in the orderly transfer of Members to another program for Mental Health Services or to another Participating Provider designated by KHP, such transfer to include the transfer of the medical records of Members. Furthermore, in the event of termination by Systems, KHP may transfer Members to other KHP Mental Health Services programs or other Participating Providers upon receipt of notice of termination from Systems including, in the event of a breach by KHP alleged by Systems or of a breach by Systems alleged by KHP, making such transfers after the time to cure the alleged breach is past.

4. RESPONSIBILITIES OF KHP

4.1 Compensation of Systems. KHP shall compensate Systems for Medically Necessary Mental Health Services rendered to Members and other ancillary non-professional services an

amount in accordance with KHP's capitation rate schedule annexed to this Agreement as Attachment A. Such rates shall remain in effect until KHP and Systems mutually agree in writing that any or all of such rates shall either be increased or decreased.

4.2 Management Information for Systems. KHP shall provide to Systems, and Systems shall implement or take appropriate action concerning:

4.2.1 Reports. Reports concerning the Utilization/Quality/Peer Review system identifying problems concerning Covered Services provided Members.

4.2.2 Claims Review. A claims review procedure integrated with the Utilization/Quality/Peer Review program.

4.2.3 Marketing Information. Information concerning the marketing policies of KHP.

4.3 Member Information. KHP will provide Systems with information, periodically updated, concerning Member eligibility, Copayment levels and benefits.

4.4 Duties of KHP's Vice President for Health Services. KHP's Vice President for Health Services (or his designee) shall undertake the following activities, with which Systems shall cooperate:

4.4.1 Administration. Supervision and implementation of day-to-day administrative policies and procedures relating to Systems.

4.4.2 Utilization/Quality/Peer Review. Coordination of Utilization/Quality Peer review with Systems.

4.4.3 Member Grievances. Facilitating the Member grievance procedure, as appropriate.

4.5 Policies and Procedures. KHP shall establish policies and procedures for the administration of the Prepaid Program. Systems shall comply with KHP's administrative policies and procedures.

5. RESPONSIBILITIES OF SYSTEMS

5.1 Arrangement for the Provision of Covered Services. Systems agrees to arrange for the provision of all Medically Necessary Covered Mental Health Services, including inpatient services, at its expense and on the same basis that similar Mental Health Services are provided to other patients, for the compensation specified in Paragraph 4.1. All Mental Health Services shall be made available to Members, when appropriate, twenty-four (24) hours a day, seven (7) days a week.

5.2 Requirements for the Provision of Medically Necessary Covered Services.

5.2.1 Prompt Provision of Medically Necessary Covered Services. Systems shall ensure that provision of Medically Necessary Covered Services will be instituted as promptly as practicable, consistent with accepted medical standards. Systems shall ensure that a Member needing Mental Health Services will be evaluated by a Participating Provider or Psychiatrist as appropriate to the needs of the patient, and no plan of treatment shall be initiated until the KHP Primary Care Physician is notified of such treatment plan. The notice required by this paragraph 5.2.1 may be by telephone initially in order to obtain timely approval, but shall be followed subsequently by written documentation. A proposed plan of care shall not be implemented without the prior approval of the KHP Primary Care Physician.

5.2.2 Mental Health Services Require Prior Approval of Primary Care Physician. Systems shall not provide Medically Necessary Covered Services, except in the case of Emergency Services, without the prior approval of a KHP Primary Care Physician. In the event of an Emergency, the KHP Primary Care Physician must be contacted within twenty-four hours of the initiation of Mental Health Services to a Member.

5.3 Representations and Warranties.

5.3.1 Physicians' Licenses to Practice; Drug Enforcement Administration ("DEA") Numbers. Systems represents and warrants that each Participating Physician, as a condition of participation with Systems, shall be board-certified and shall have an

unrestricted license to practice medicine in Pennsylvania and hold a current DEA number at all times. Systems shall, at a minimum, conduct an annual reexamination of each physician's credentials.

5.3.2 Participating Psychologists' and other Participating Providers' Licenses to Practice. Systems represents and warrants that each Participating Psychologist, Psychiatric Nurse, Psychiatric Social Worker and other licensed Participating Provider, as a condition of participation with Systems, shall have an unrestricted license to practice in Pennsylvania. Systems shall, at a minimum, conduct an annual reexamination of each Participating Provider's credentials.

5.4 Medical Records. Subject to applicable confidentiality requirements, Systems shall provide for a system, to the extent feasible, which permits maximum sharing of medical records and administrative services by Participating Physicians and Providers making Medically Necessary Covered Services available to Members.

5.5 Utilization/Quality/Peer Review. Systems shall participate and cooperate with KHP as KHP establishes a systematic Utilization/Quality/Peer Review, including establishment and enforcement of an appropriate enforcement mechanism for all final peer review decisions of Systems or KHP. Systems shall participate in an appropriate Utilization and Quality Assurance Peer Review Committee established by KHP or an organization under contract with KHP under the direction of KHP's Vice President for Health Services, which shall participate in the development and modification, over time, of standards to which Systems must adhere in the provision of Medically Necessary Covered Services to Members. KHP's Vice President for Health Services shall be an ex-officio members of such committee.

5.6 Meetings of the Utilization and Quality Assurance Peer Review Committee. The Committee shall meet no less than quarterly to review and analyze data concerning Utilization/Quality/Peer Review.

5.7 Continuing Medical Education. Systems shall establish and maintain guidelines and minimum requirements for the continuing medical education of personnel engaged by Systems in accordance with KHP policies. Systems shall use its best efforts to

ensure that Medically Necessary Covered Services provided to Members are of a quality that conforms to accepted medical and surgical practices prevailing in KHP's Service Area.

5.8 Use of Participating Physicians and Providers. Except in cases of Emergency, Systems agrees to use only those Participating Physicians and Providers who or which have contracted with KHP, unless otherwise authorized by KHP. Criteria for Medically Necessary Covered Services, including Emergency Services, shall be established by KHP and administered by KHP's Vice President for Health Services or his designee. Except in the case of Emergency services, compliance with applicable referral procedures, including use of KHP's prescribed forms and the prior approval of KHP's Vice president for Health Services or his designee, shall be required for payment for Medically Necessary Covered Services rendered to Members by nonparticipating physicians or providers (physicians or providers that do not have contracts with KHP). Furthermore, Systems agrees to engage, as a consultant to Systems, any Participating Psychiatrist who wishes to enter into such an agreement with Systems, and also agrees that such Participating Psychiatrist shall be paid at or above the KHP fee schedule for providing Mental Health Services under such an agreement.

5.9 Compliance with Administrative Policies. Systems shall comply and cooperate with all KHP administrative policies including, but not limited to, claims procedures, copayment collections, subrogation and coordination of benefits recoveries. Furthermore, Systems shall provide KHP access to Contractor's financial, accounting, and health care records relating to the provision of services to Members.

5.10 Maintenance of Medical Records. Systems shall require the professionals it subcontracts with to maintain adequate medical records for Members they treat. The normal standards and procedures for maintaining medical records shall apply to Systems' contractors. Subject to all applicable privacy and confidentiality requirements, medical records of Members shall be made available to each physician and Participating Psychologist treating Members and shall be made available upon request by any proper committee of Systems or KHP to make determinations regarding Utilization/Quality/Peer Review, or grievance review. Systems agrees to maintain all of their respective medical and financial books, documents and records for the greater of four (4) years or the length of time it is

required to maintain such books, documents, and records under applicable federal or state law, which obligation shall not terminate upon the termination of this Agreement.

5.11 Nondenial of Treatment. Systems agrees that in no event including, but not limited to, nonpayment by KHP, KHP insolvency or breach of this Agreement, shall Systems bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against any Member, enrollee, or persons acting on their behalf, for Covered Services provided pursuant to this Agreement, other than KHP. This provision shall not prohibit collection of copayments or charges for noncovered services provided to Members. Systems further agrees that this provision shall survive the termination of this Agreement regardless of the cause giving rise to termination and shall be construed to be for the benefit of KHP Members, and that this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between Systems and Members or persons acting on their behalf. Any modification, addition or deletion to the provisions of this section shall become effective on a date no earlier than fifteen (15) days after the Commissioner of Insurance has received written notice of such proposed changes.

5.12 Cooperation on Regulatory Matters. Systems agrees to cooperate with KHP in required regulatory examinations of either KHP or Systems. Systems shall comply with all applicable laws and regulations governing health maintenance organizations and all other laws and regulations to which KHP and Systems are subject.

5.13 HMO Networks. If KHP participates in national or regional networks involving other health maintenance organizations, Systems and the Participating Physicians and Providers shall provide emergency and urgent care services as defined by said program to persons who have coverage under such program, when requested by KHP. Compensation for such services shall be based upon then existing KHP fee schedules for the Service Area and shall be paid by KHP upon submission of properly documented claim forms documenting the services provided within sixty **(60)** days of providing such services.

5.14 Medical Audits. Systems shall participate and cooperate in KHP medical audits and assure the adequacy, maintenance, and documentation of clinical patient data in the clinical

records. Systems agrees to submit to medical audits relating to KHP's standard of medical practice, quality of care and medical records under this Agreement.

5.15 Encounter Forms and Reports Concerning Patient Care. Systems will accurately fill out for each patient visit, and return to KHP weekly, KHP's encounter forms pertaining to Medically Necessary Covered Services provided to Members. Systems will provide to KHP, with the encounter forms, reports which detail the diagnosis, plan of treatment and course of treatment, as appropriate, for each Member receiving Mental Health Services.

5.16 Associate's Insurance. Systems, at its sole cost and expense, shall maintain such policies of comprehensive general liability, professional (malpractice) liability, Officers' and Directors' liability, and other insurance as shall be necessary to insure Systems and its agents, servants and employees, acting within the scope of their duties, against any claim or claims for damages arising by reason of personal injuries or death occasioned directly or indirectly in connection with the performance of any medical or surgical services by Systems or by such agents, servants or employees, and in connection with any other activities performed by Systems or by such agents, servants or employees pursuant to the terms and conditions of this Agreement. Such policies shall provide a minimum coverage of $1,000,000 per claim, and $3,000,000 in the aggregate. The originals of said policies shall be retained by Systems and copies thereof shall be delivered to KHP. Systems agrees to include a provision in each policy that the insurance carriers shall notify KHP thirty (30) days prior to amendment or termination of said policies.

6. RELATIONSHIP BETWEEN KHP AND SYSTEMS

6.1 Independent Relationship. With respect to the provision of Covered Services, none of the provisions of this Agreement are intended to create nor shall be deemed or construed to create any relationship between Systems and KHP other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Therefore, neither of the parties hereto nor any of their respective representatives shall be construed to be the agent, the employer, or representative of the other.

6.2 Cooperation. Systems and KHP shall maintain

an effective liaison and close cooperation with each other to provide maximum benefits to each Member at the most reasonable cost, consistent with accepted medical standards.

6.3 Marketing Literature. Systems understands and agrees that KHP may list Contractor's name, address, telephone number and a description of its Services in KHP's roster of Participating Physicians and Providers and in other KHP brochures and marketing literature. Systems shall not identify KHP in any media or describe the contractual relationship provided hereunder, in any marketing, promotional, or other similar communications of KHP without prior written consent of KHP.

6.4 Grievance Procedures. Systems shall cooperate in all KHP grievance procedures, copies of which shall be provided to Systems, and Systems shall abide by the determinations made in individual grievance proceedings.

6.5 Confidentiality of Medical Records. Systems and KHP agree that medical records of Members shall be treated as confidential so as to comply with all applicable laws and regulations regarding the confidentiality of patient records.

6.6 Proprietary Information. During the term of this Agreement, extensions thereof, and for three (3) years thereafter, Systems shall keep strictly secret and confidential any proprietary information regarding KHP, and KHP shall keep strictly secret and confidential any proprietary information regarding Systems. All information which Systems or KHP has a reasonable basis to consider KHP or Systems proprietary information or which is reasonably treated by the other party as being proprietary information shall be presumed to be proprietary information, whether originated by Systems or KHP or others, and without regard to the manner in which access to such information was obtained. Each party shall take necessary and reasonable precautions to prevent unauthorized disclosure of proprietary information and shall require all of its officers, employees, and other personnel to whom it is necessary to disclose the same, or to whom the same has been disclosed, to keep such proprietary information secret and confidential. However, it is understood that certain proprietary information may be required to be filed with the appropriate regulatory agencies in accordance with their reporting requirements. The term "proprietary information" shall mean all information and data regarding financial information,

including the fees and capitation rates charged or paid with respect to Members or by KHP or Systems; the profitability of the parties; the parties' business plans and strategies, including goals to expand the KHP Service Area, add additional health centers, or expand existing health centers; management information systems; management and marketing procedures; contracts or business relationships with employers, suppliers, and governmental agencies; the provisions of KHP's benefit packages, including any proposed changes thereto; any information obtained by the parties in connection with this Agreement; and other trade secrets and matters traditionally considered to constitute proprietary information.

6.7 Indemnification. Systems agrees to indemnify KHP for any losses (including reasonable attorney's fees) incurred by KHP solely arising from the negligent acts by Systems. KHP agrees to indemnify Systems for any losses (including reasonable attorney's fees) incurred by Systems solely arising from a negligent act of KHP.

7. MISCELLANEOUS

7.1 Headings. The headings of the various sections of this Agreement are inserted solely for the purpose of convenience and do not, expressly or by implication, limit, define or extend the specific terms of the section so designated.

7.2 Arbitration. In the event any dispute shall arise with regard to the performance or interpretation of any of the terms of this Agreement, all matters in controversy shall be submitted to a Board of Arbitrators consisting of three (3) members, under the rules and regulations of the American Arbitration Association. Both parties expressly covenant and agree to be bound by the decision of the arbitrators as a final determination of the matter in dispute. Any decision of the arbitrators shall be enforceable in a court of competent jurisdiction unless otherwise prohibited by law.

7.3 Future Changes in Law. Any future changes in the HMO Act, or in the regulations promulgated under it, are deemed to be automatic amendments to the Agreement to the extent necessary to put the Agreement into compliance with the act and the regulations.

7.4 Entire Agreement. This Agreement contains all terms and conditions agreed upon by KHP and Systems, and

supersedes all other agreements of the parties hereto, oral or otherwise, regarding the subject matter hereof.

7.5 Amendment. Except as otherwise provided herein, this Agreement may be amended at any time by mutual agreement of the parties, provided that before any amendment shall be operative and valid, it shall be reduced to writing and signed by KHP and Systems. In the event that KHP or Systems amends this Agreement unilaterally, the other party shall be given thirty (30) days prior written notice of such change. If theo ther party fails to object to such amendment, in writing, within the thirty (30) day notice period, such amendment shall be deemed to be accepted.

7.6 Severability, Waiver. The invalidity or unenforceability of any terms or provisions hereof shall in no way affect the validity or enforceability of any other term or provision. The waiver by either party of a breach or violation of any provision of this agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.

7.7 Notice. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified mail, return receipt requested, postage prepaid, to KHP at:

Keystone Health Plan East
3 Bala Plaza East
Suite 103
Bala Cynwyd, PA 19004

Attn: Vice President for Health Services and to Systems at:

Plymouth Healthcare Systems, Inc.
Suite 201, 531 W. Germantown Pike
Plymouth Meeting, PA 19462

Attn: Administrative Director

7.8 Assignment. This Agreement shall not be assigned, delegated, or transferred by Systems without the prior written consent of KHP.

7.9 Governing Law. This Agreement shall be construed according to the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

KEYSTONE HEALTH PLAN EAST

Date: By:_____

Name and Title:

PLYMOUTH HEALTHCARE SYSTEMS, INC.

Date: By:_____

Name and Title:

SCHEDULE OF ATTACHMENTS

Attachment A	Capitation Rate Schedule
Attachment B	Covered Mental Health Benefits

ATTACHMENT A

CAPITATION SCHEDULE

KHP shall pay a monthly capitation fee of $1.85 for each member assigned to PHS.

**Co-payment schedule is in compliance with KHP charges as stated in Attachment B.*

ATTACHMENT B

COVERED MENTAL HEALTH BENEFITS

Systems shall arrange for the provision of the Mental Health Services listed in Section 1 below to Members referred by Primary Care Physicians for such Services, with the exception of Emergency Services which do not require initial referral by a Primary Care Physician, at Systems expense with no charge to Members other than the required copayments which are listed in Section 2 below. If Systems arranges for the provision of nonemergency Services without the prior approval of a Primary Care Physician, the Member may not be charged any copayment for the services provided, nor will the visit or inpatient days be counted against the limitations on visits or days provided in Subsections 1.1 and 2.1 of Section 1. Systems shall be entirely responsible for the expenses associated with any nonemergency visits and inpatient days not prior authorized by the Primary Care Physician.

1. Covered Mental Health Services

1.1. Outpatient. Outpatient Mental Health Services which are Medically Necessary for short term evaluation or crisis intervention, limited to a maximum of twenty visits* within twelve consecutive months, which Services include, but are not limited to:

1.1.1. Psychological testing. This is a covered service when necessary to the evaluation and treatment of a Member. It is not a covered service if ordered by a court or a school district.

1.1.2. Psychiatric and psychological services provided, as appropriate, by Participating Psychiatrists or Participating Providers, to include but not be limited to consultation, medical supervision and patient care and management.

1.1.3. Participating Providers and Psychiatrists will be available 24 hours a day, 7 days a week, for the entire time the terms of this Agreement continue in effect. Each Participating Psychiatrist or Participating Provider will be on call for his or her patients and back-up coverage will be provided as necessary.

*A visit is a single presentation of a patient to a Participating Psychiatrist or Participating Provider for care which covers at least 50 minutes. Any time duration of less than 50 minutes will count as a partial visit, and any partial visit shall count as half a visit for purposes of the twenty visit limitation. Systems shall treat a partial visit as a full visit for purposes of charging Members copayments.

1.2. Inpatient. Inpatient Mental Health Services which are Medically Necessary provided in a Pyschiatric Hospital, limited to thirty inpatient days within twelve consecutive months, which Services include but are not limited to:

1.2.1. Room and board and related services.

1.2.2. Psychiatric and psychological services.

1.2.3. Twenty-four hour nursing care.

1.2.4. Emergency medical consultation and treatment.

1.2.5. Medication

1.2.6. Directly related medical and neurological consultations, including both undertaking and reading the results of EKG and EEG examinations.

2. Copayments

2.1. Outpatient. The Member is required to make copayments of the lower of $25 or 50% of KHP's allowable charges for each outpatient visit for up to twenty visits in twelve consecutive months. For any visits in excess of twenty in twelve consecutive months, Systems must tell the Member that the Member is liable for Systems' charges for each visit the Member uses in excess of twenty in twelve consecutive months. Systems shall only charge Members copayments for full visits or the equivalent thereof (i.e., Systems may charge a Member half a copayment for a partial visit as defined above).

2.2. Inpatient. The Member is entitled to thirty

Medically Necessary inpatient days in twelve consecutive months. Systems may not make any charges to Members for these days. For any days in excess of thirty in twelve consecutive months, Systems must tell the Member that the Member is liable for the Psychiatric Hospital's inpatient charges for each day the Member uses in excess of thirty in twelve consecutive months.

3. Emergency Services

When KHP notifies Systems that a Member has been stabilized in an emergency room, and that mental health intervention is appropriate, Systems will contact the emergency room within one hour to arrange for disposition of the Member. If Systems does not respond within one hour, KHP may authorize the emergency room to admit the Member for 48 hours at the expense of Systems. It is hereby acknowledged and agreed that, in the event that KHP does not notify Systems in the first instance that a Member has been stabilized in an emergency room, Systems shall not be at risk and shall not be responsible for the payment for any inpatient services provided to the Member in the event of admission to the hospital. It is further acknowledged and agreed that in no event shall Systems be at risk for the cost of emergency room services provided to Members.

KEYSTONE
HEALTH PLAN EAST
H M O
3 Bala Plaza East
251 St. Asaphs Road
Bala Cynwyd, PA 19004-1410
(215) 668-1230
August 5, 1988

Robert M. Mabel, Ph.D.
Executive Vice President of
Administrative Services
Plymouth Healthcare Systems
The Water Tower Building
6198 Butler Pike
Blue Bell, PA 19422

Dear Dr. Mabel:

We would again like to thank you and your staff for taking the time to come to Keystone Health Plan East to meet with us yesterday. We appreciated receiving your proposal for the Provision Of Substance Abuse Benefits. With this letter, we are confirming the requests we made for a few additional items of information.

Firstly, as stated in our letter of April 26th (see attachment), we expected to receive a listing of your Drug and Alcohol Treatment Providers as part of the presentation of your proposal. Obviously, before we can truly evaluate your proposal, we must be aware of the providers who will be caring for our members. As we discussed in our meeting we require a listing that includes the following:

1. Names of Providers
   Addresses of Providers

2. Names of Facilities (both Inpatient and Outpatient)
   Locations of Facilities

Since we are combining our Substance Abuse and Mental Health Benefits for a better coordination of care, we need to closely examine

the network for adequate coverage and access for our members. With this combining of benefits and the need for one provider, this evaluation of your network will also be an evaluation of your Mental Health Provider Network as previously contracted. We hope that your network will prove to meet our needs.

Secondly, please forward to us an updated provider listing of your Mental Health component that we are currently using. This listing should contain the same items as listed above.

000943

Exhibit "B"

Thirdly, although we did not mention this request in our meeting, I want the following information:

Names of KHPE members who received treatment from Plymouth Healthcare Systems during the last year (7/1/87 through 7/1/88)

This information will be used to conduct a member satisfaction survey of care received from providers within your network.

We look forward to receiving all of this information immediately. At this time, we are not able to proceed any further in the evaluation of plans for provision of Drug and Alcohol treatment or in the evaluation of your proposal. Therefore, we request that you have this information to us by Friday, August 19th.

Should we find that your network does not meet our needs, or, that your contract terms are not competitive with other providers, this letter will serve as our 120 day notice of termination of our current Mental Health Provider contract.

Feel free to contact me if you should have any questions regarding any of the above.

Sincerely,

Austin S. Litvak, M.D.
Vice President of Health Services

/ls-27

cc: G. Fred DiBona Jr., President & CEO, KHPE
John Daddis, Executive Vice President, KHPE
Linda Taylor, Director of Marketing
Carol M. Harris, R.N., Utilization Review Manager
Susan T. Bradley, Provider Relations Manager
Carl R. Sonder, M.D. Medical Director, PHS
Daphne Braverman, Administrative Director, PHS

000944

KEYSTONE
HEALTH PLAN EAST
H M O
3 Bala Plaza East
51 St Asaphs Road
Bala Cynwyd, PA 19004-1410
(215) 668-1230

February 8, 1989

Daphne Braverman, MA
Administrative Director
Plymouth Health Care Systems, Inc.
The Water Tower Building
6198 Butler Pike
Blue Bell, PA 19422

Dear Daphne,

Enclosed is the Keystone Health Plan East' Request for Proposals for the provision of Mental Health Care and Substance Abuse Treatment. As I discussed with you, we have on file your proposal submitted to us in November of 1988. Please note that the format of the enclosed Request for Proposal follows closely the proposal you submitted to us in November, 1988. This formatting was intentional in order that should you wish to make any additions or revision to your November 1988 proposal they could be easily inserted without redoing the entire proposal. It is our desire to have a single entity to provide the Mental Health and Substance Abuse Benefits to our members. Since you are now providing Mental Health benefits to our membership, you are aware of our rapid growth. Please refer to our budgeted membership growth projections which I recently forwarded to you.

Also enclosed, is a copy of our our current proposed Mental Health Substance Abuse Benefits and a vendor listing. This revised Benefits Package has been submitted to the Pennsylvania Department of Insurance and we are awaiting confirmation of approval. A response to the RFP is requested by March 15, 1989. If after review

of the RFP you feel that you will be making no revisions to your November 1988 proposal, please let me know in order that we may review the proposal as submitted.

Should you have any questions regarding the above, please do not hesitate to contact me at 668-3056.

Sincerely,

Carol M. Harris, RN BS
Utilization Review Manager

/ls-4
Enclosures: RFP, Benefit Package and Vendor Listing

Exhibit "C"
000438

KEYSTONE
HEALTH PLAN EAST
H M O
Bala Plaza East
251 St. Asaphs Road
Bala Cynwyd, PA 19004-1410
(215) 668-1230

February 7, 1989

Daphne Braverman
Administrative Director
Plymouth Health Care Systems, Inc.
Water Tower Building
6198 Butler Pike
Blue Bell, PA 19422

Dear Daphne,

Enclosed is the 1989 Budget and Membership Projections and the membership breakdown by zip code. Please note that the zip code breakdown that we have available is done by group with a total of members for each zip code. Should you need assistance in reading this report, please contact Sue Bradley, and I am sure she will be glad to discuss the report with you. Sue can be reached at 668-3051.

I will contact you as soon as I have a date for rescheduling our cancelled meeting. As always should you have any need to contact me prior to our meeting, please feel free to do so at 668-3056.

Sincerely,

Carol M. Harris, RN, BS
Utilization Review Manager

/ls-1

cc: John Daddis, Executive Vice President
Susan Bradley, Provider Relations Manager

000439

A68

Mark A. Klugheit, Esquire
I.D. No. 20148
Joel H. Levitin, Esquire
I.D. No. 51289
Laura Aldir-Hernandez, Esquire
I.D. No. 59577
DECHERT PRICE & RHOADS
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103
(215) 994-4000

Attorneys for Plaintiff
Keystone Health Plan
East, Inc.

ATTEST

Aug. 8, 1991
J.White
Pro.Prothy

KEYSTONE HEALTH PLAN EAST, INC.,
a Pennsylvania corporation
3 Bala Plaza East
Bala Cynwvd, PA 19004,

Plaintiff,

V.

PLYMOUTH HEALTHCARE SYSTEMS, INC., a
Pennsylvania corporation
531 W. Germantown Pike,
Suite 201
Plymouth Meeting, PA 19462,

and

PLYMOUTH HEALTHCARE ASSOCIATES, a
Pennsylvania partnership
531 W. Germantown Pike
Plymouth Meeting, PA 19462,

and

CARL R. SONDER
1408 Mountain View Drive

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

CIVIL ACTION
IN EQUITY

AUGUST TERM, 1991

NO. 929

ASSESMENT OF DAMAGES
HEARING IS REQUIRED

Wayne, PA 19087, individually
and as a partner of Plymouth
Healthcare Associates,

and

ROBERT M. MABEL
102 Evergreen Court
Blue Bell, PA 19422
individually and as a partner of
Plymouth Healthcare Associates,

and

DANIEL F. SMALTINI
2337 Rhawn Street
Philadelphia, PA 19152,
individually and as a partner of
Plymouth Healthcare Associates,

and

BERNARD GARBER
823 Horning Road
Lancaster, PA 17601,
individually and as a partner of Plymouth
Healthcare Associates,

Defendants.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you Must take action within twenty (20) days after this complaint and notice are served, by enter-

ing a written appearance personnally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CAN NOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OVT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERENCE SERVICE
WIDENER BUILDING, SECOND FLOOR
1339 CHESTUT STREET
PHILADELPHIA, PENNSYLVANIA 19107
864-0400

AVISO

Le han demandado a usted en la corta. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes. Usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corta en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea, avisado que si usted no se defiende, la corta tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corta puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICO. VAYA EN PERSONA O, LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

SERVICIO DE REFERENCIA LEGAL
Widener Building, Segundo Piso
1339 Chestnut Street
Filadelfia, Pennsylvania l9107
864-0400

VERIFIED COMPLAINT IN EQUITY

Plaintiff Keystone Health Plan East, Inc., through its undersigned attorneys, hereby brings this lawsuit to remedy the deliberate, unlawful, irresponsible and bad faith actions of the

defendants.

Parties

1. Plaintiff Keystone Health Plan East, Inc. ("Keystone") is a Pennsylvania corporation with its principal place of business at 3 Bala Plaza East, Bala Cynwyd, Montgomery County, Pennsylvania 19004.

2. Defendant Plymouth Healthcare Systems, Inc. ("Plymouth") is a Pennsylvania corporation with its principal place of business at 531 W. Germantown Pike, Suite 201, Plymouth Meeting, PA 19462.

3. Defendant Plymouth Healthcare Associates ("Associates") is a Pennsylvania partnership which, upon information and belief, is alleged to be composed of four partners: defendants Carl R. Sonder, Robert M. Mabel, Daniel F. Smaltini, and Bernard Garber ("the Individual Partners"). The Individual Partners are sued both as individuals and as partners in the Associates.

4. Keystone is a health maintenance organization ("HMO") in the business of providing its members with health care services in Philadelphia County, Pennsylvania and other areas of southeast Pennsylvania.

5. Plymouth is in the business of providing management

services in connection with the delivery by others of mental health care and substance abuse treatment services.

6. The majority shareholder of Plymouth is the Associates.

7. Upon information and belief, it is alleged that Associates are in the business of providing mental health care and substance abuse services and that some of the Individual Partners themselves are also providers of such services.

8. Upon information and belief, it is alleged that some or all of the Individual Partners are officers and/or directors of Plymouth and/or are otherwise in charge of or control both the daily and long-term operations of Plymouth, including its financial planning.

9. Upon information and belief, and in light of the facts pled throughout this Complaint, it is further alleged that the relationship between all of the defendants or at least of Plymouth and the Associates is such that Plymouth and the Associates should be treated as a single entity at least, but not limited to, for the purposes of this lawsuit.

Jurisdiction and Venue

10. This Court has jurisdiction over all of the claims asserted herein, and venue is proper because Keystone regularly does business in Philadelphia; Keystone has approximately 63,000

members who are residents of Philadelphia; more than 1,000 Keystone members located in Philadelphia received health care through providers arranged for by Plymouth; one or more of the defendants resides in Philadelphia; a significant number of the health care providers which rendered as yet uncompensated services to Keystone members are located in Philadelphia; and many of the unpaid health services at issue in this case were provided in Philadelphia County.

Factual Background

Keystone's Interests

11. By bringing this lawsuit, Keystone is advancing its vital interest as an HMO in providing for the benefit of current and potential members, high quality, cost-effective, and dependable health care services and in maintaining and enhancing its reputation for offering such services.

12. Because the Philadelphia area is a highly competitive HMO marketplace, an HMO's reputation is particularly vital. As an HMO which operates in the Philadelphia market, Keystone thus has an even greater interest in protecting its reputation for offering high quality, cost-effective, and dependable health care services, and this concern is addressed by this lawsuit.

13. Keystone also has an interest in maintaining good business and contractual relationships with its health care providers.

Accordingly, through this Complaint Keystone is advancing its interest in making certain that providers do not stop dealing with Keystone. Although Keystone's network of providers is vast, it is also significantly intertwined such that an adverse effect on relationships with these providers due to the acts complained of in this Complaint would also have a deleterious effect on Keystone's business and contractual relationships with providers and services unrelated to those at issue in this case.

14. Keystone has also brought this Complaint to assert the interests of Keystone's members in receiving continuous, high quality medical care and treatment, in particular within the context of their Keystone coverage, and in being assured that the providers of such care will be appropriately compensated.

15. As part of maintaining and enhancing its reputation for the services described in paragraph 11, Keystone has a vital interest in making certain that the claims of those health care providers who render services to Keystone members are paid in full in a prompt, efficient, and dependable manner. Such payment also benefits Keystone members in that it furthers the interests of those members in not being directly billed for health care services rendered to them in the event of nonpayment by Plymouth, while also ensuring that the claims of Plymouth providers are satisfied and hence that said pro-

viders will continue to provide Keystone members with services.

Keystone's Contract With Plymouth

16. Keystone and Plymouth entered into a contract entitled Agreement Between Keystone Health Plan East, Inc. and Plymouth Healthcare Systems, Inc. With Respect to the Delivery of Mental Health and Substance Abuse Services ("the Agreement") which went into effect on July 15, 1989. (A true and correct copy of the executed Agreement is attached hereto as Exhibit A and is incorporated by reference herein.)

17. Under the Agreement, Plymouth agreed to provide management services in connection with the delivery by others of mental health care and substance abuse services, including arranging and paying for the provision of mental health care and substance abuse services by qualified providers to Keystone members. As a key part of the Agreement, Plymouth also specifically agreed to be financially responsible for all such services.

18. Under the terms of the Agreement, Keystone agreed to pay Plymouth certain sums which Plymouth was then obligated to use to satisfy the claims of Plymouth providers for services rendered to Keystone members.

19. Keystone entered into the Agreement with the understanding that Plymouth would fulfill all of the aforementioned obliga-

tions and that Plymouth would act in a lawful, prudent, fiscally responsible, and good faith manner.

20. Upon information and belief, it is alleged that, pursuant to the Agreement, Plymouth entered into contracts with providers of mental health and substance abuse services to provide services to Keystone members (the "Contractor Agreements"). Upon information and belief, it further is alleged that the Associates and some of the Individual Partners also entered into these Contractor Agreements on behalf of Plymouth and its obligations under the Agreement.

21. Under the terms of the Contractor Agreements, Plymouth was obligated to pay promptly and in full the claims of Plymouth providers.

22. In or about March 1991, in accordance with the terms of the Agreement, Keystone gave Plymouth 90 days notice that it was terminating the Agreement and that the termination would be effective June 30, 1991.

23. The Agreement was properly and lawfully terminated by Keystone effective June 30, 1991.

Defendants' Misrepresentations, Disparagement, Interference With and Breaches of Contracts

24. During 1991, Keystone initiated a competitive bid

procedure to enter into a new contract for mental health management services.

25. Plymouth participated in the aforementioned bid process but was notified on May 1, 1991 that another group had been selected and that they would not be Keystone's mental health management services provider after June 30, 1991.

26. Throughout this competitive bid process, some or all of the defendants repeatedly made representations and gave assurances to Keystone regarding the sound financial position and stability of Plymouth with the specific intent of encouraging Keystone's reliance upon these statements in order to secure another contract for Plymouth with Keystone.

27. Among the representations and assurances made by some or all of the defendants to Keystone throughout the bid process were the representations that Plymouth would be able to perform the new contract it sought at a price lower than its then current operating costs under the Agreement and lower than the costs it was allegedly incurring under the Agreement in late 1990 when it sought an increase in payment from Keystone.

28. The representations and assurances referred to in the preceding two paragraphs were false and were made deliberately and knowingly by some or all of the defendants.

29. The foregoing demonstrates the bad faith of some or all of the defendants in the relations with Keystone.

30. In a letter dated July 18, 1991, which was addressed and sent to all of the hospitals and physicians who provide mental health and substance abuse services to Keystone members ("Plymouth providers") with outstanding balances, Plymouth announced its intention to pay only 9.3 percent of the outstanding amounts owed to Plymouth providers for services rendered to Keystone members. (A true and correct copy of this letter is attached hereto as Exhibit B and incorporated by reference herein.)

31. Upon information and belief, it is alleged that Plymouth currently owes Plymouth providers approximately $1,000,000.00 as payment for services rendered to Keystone members.

32. Keystone has paid all sums due and owing to Plymouth pursuant to the Agreement.

33. Keystone paid the sums described in paragraph 32 to Plymouth so that Plymouth would in turn pay Plymouth providers for any and all services rendered to Keystone members.

34. Pursuant to the provisions of the Agreement, Plymouth therefore owes and is liable for the sums described in para-

graph 31.

35. Under the terms of the Agreement, Keystone members cannot be billed directly by Plymouth or any Plymouth provider.

36. At least one Plymouth provider has already directly billed a Keystone member.

37. The act described in paragraph 36 and the possibility and/or threat that similar acts will occur are due solely and directly to the unlawful and irresponsible acts of Plymouth described throughout this Complaint.

38. The terms of all subscriber agreements between Keystone and its members also provide that Keystone members cannot be billed directly for health services rendered to them.

39. The unlawful acts of Plymouth described throughout this Complaint therefore also interfere with Keystone's subscriber agreements.

40. In its letter of July 18, 1991, described in paragraph 30, Plymouth explicitly or implicitly misrepresented or asserted to recipients of this letter that Keystone had given Plymouth false assurances regarding the parties' contractual or business future and that said assurances caused in whole or in part Plymouth's claimed economic demise and hence its alleged inability to pay the claims of Plymouth providers.

41. Plymouth made the misrepresentations or assertions described in the preceding paragraph with the specific intent to cause harm to Keystone and to divert attention away from Plymouth's own mismanagement and questionable financial dealings with the Associates, the Individual Partners, and possibly others.

42. By letter dated August 5, 1991, Keystone informed defendants that it controverted the statements made in Plymouth's July 18, 1991 letter and demanded a retraction of same.

43. Defendants received and ignored Keystone's letter.

44. On August 5, 1991 after receipt of Keystone's letter, Plymouth held a meeting with providers who had rendered services to Keystone members.

45. At the meeting referred to in the preceding paragraph, Plymouth agents once again explicitly or implicitly misrepresented or stated to their audience that Keystone gave Plymouth false assurances regarding the parties' contractual or business future and that those so-called assurances caused in whole or in part Plymouth's claimed economic demise and hence its alleged inability to pay the claims of Plymouth providers.

46. Plymouth made the misrepresentations or assertions described in the preceding paragraph with knowledge that they were

and are untrue and with the specific intent to cause harm to Keystone and to divert attention away from Plymouth's own mismanagement and questionable financial dealings with the Associates, the Individual Partners, and possibly others.

47. At the August 5, 1991 meeting, Plymouth agents admitted that Keystone had paid all sums due and owing to Plymouth under the Agreement.

48. At that meeting, Plymouth agents distributed documents describing Plymouth's financial position. These documents demonstrate that Plymouth was paying off and apparently eventually eliminated its debts to the Associates, while at the

(a) Plymouth requested that payments made by Keystone under the Agreement be made payable directly to the Associates;

(b) checks for payments made by Keystone under the Agreement were made out to and endorsed by the Associates or its agents;

(c) Plymouth financial statements suggest that loan balance allegedly due from Plymouth to Associates were reduced by nearly $200,000 during the time in which Plymouth allegedly became unable to pay nearly $1 million to providers; and

(d) Plymouth apparently gave preferential treat-

ment to the Associates and/or to the Individual Partners.

55. Upon information and belief, it is alleged that the Associates and Individual Partners knowingly or otherwise participated with, aided, or encouraged Plymouth in planning and/or engaging in the aforementioned conduct.

COUNT I: EQUITABLE CLAIMS

56. Keystone hereby incorporates paragraphs 1 through 55 from above and paragraphs 62 through 88 from below as though set forth at length.

57. Due to the defendants' acts, as described in the foregoing and following paragraphs, Keystone has suffered and will continue to suffer irreparable harm including injury to its reputation, loss of goodwill, loss of members or decrease in its ability to attract new members, and loss of any ability to trace the sums paid by Keystone to Plymouth under the Agreement.

58. Keystone has no adequate remedy at law for said harm.

59. Keystone accordingly seeks an injunction, both preliminary and permanent, enjoining defendants from disbursing any funds other than in the ordinary course of business and enjoining defendants from all of the unlawful acts described in the Complaint.

60. Keystone further seeks a judgment declaring Plymouth

in breach of the Agreement and the Contractor Agreements, and requiring defendants and each of them to make payment in full to all Plymouth providers for all services rendered to Keystone members.

61. Keystone further seeks a full and complete accounting of the use and disposition of all funds paid or provided to Plymouth, the Associates or any of the Individual Partners by Keystone pursuant to or in connection with the Agreement.

WHEREFORE, plaintiff Keystone respectfully requests that this Court enter judgment in its favor and against defendants and award the relief requested herein plus Keystone's attorneys' fees, and such other equitable and/or legal relief as the Court deems appropriate.

COUNT II: BREACH OF CONTRACT

62. Keystone hereby incorporates by reference paragraphs 1 through 61 from above as though set forth at length.

63. Plymouth breached the Agreement by failing to pay or satisfy promptly in whole or in part some or all of the claims made by Plymouth providers.

64. Keystone has been harmed directly and severely as a result of Plymouth's breach of contract. Keystone fully paid Plymouth for the claims of providers. These providers, however, have

still not been fully paid, and they are seeking and/or will seek payment of these claims from Keystone or its members. Further, Plymouth's failure to pay its providers and the fact that at least one of these providers has sought, and other providers may seek, payment directly from members has harmed and will continue to harm Keystone's reputation and relations with these members as well as with the Plymouth providers.

WHEREFORE, plaintiff Keystone respectfully requests that this Court enter judgment in its favor and against defendants and award damages to Keystone in an amount in excess of $20,000.00, plus Keystone's attorneys' fees, and such other equitable and/or legal relief as the Court deems appropriate.

COUNT III: BREACH OF CONTRACT

65. Keystone hereby incorporates by reference paragraphs 1 through 64 from above as though set forth at length.

66. Keystone and its members are, were intended to be, and were understood to be third-party beneficiaries of the Contractor Agreements.

67. Plymouth breached the Contractor Agreements with Plymouth providers by failing to pay or satisfy promptly in whole or

in part some or all of the claims made by Plymouth providers to the detriment of Keystone and its members.

68. Keystone brings this breach of contract claim on its own behalf as third-party beneficiary and on behalf and in furtherance of the rights of Keystone members.

WHEREFORE, plaintiff Keystone respectfully requests that this Court enter judgment in its favor and against defendants and award damages to Keystone in an amount in excess of $20,000.00, plus Keystone's attorneys' fees, and such other equitable or legal relief as the Court deems appropriate.

COUNT IV: DEFAMATION

69. Keystone hereby incorporates by reference paragraphs 1 through 68 above as though set forth at length.

70. Plymouth and, upon information and belief, some or all of the Individual Partners have knowingly made untrue, deceptive, and disparaging statements about Keystone's conduct vis-a-vis Plymouth and about Keystone's alleged role in Plymouth's economic problems and hence Plymouth's failure to pay all Plymouth providers in full.

71. These statements were made, written, and/or published to third parties.

72. These statements are not privileged.

73. As a result of these intentionally false and disparaging statements, Keystone has suffered damages, including lost goodwill, damaged reputation, and decreased acceptability and sales of Keystone's services. Keystone continues to suffer such damages as a result of Plymouth's disparaging statements.

74. Given the fact that Keystone warned defendants that it considered their statements or assertions to be false, that Keystone demanded a retraction, and that despite the foregoing defendants did not cease their misrepresentations, defendants' actions are wanton, willful, and warrant the imposition of punitive damages.

WHEREFORE, plaintiff Keystone respectfully requests that this Court enter judgment in its favor and against defendants and award damages to Keystone in an amount in excess of $20,000.00, plus Keystone's attorneys' fees, and such other equitable or legal relief as the Court deems appropriate.

COUNT V: COMMERCIAL DISPARAGEMENT

75. Keystone incorporates by reference paragraphs 1 through 74 from above as though set forth at length.

76. Upon information and belief, the false statements knowingly made by Plymouth and some or all of the Individual Partners about Keystone were made by these defendants with the

specific intent to cause Keystone pecuniary loss.

77. Keystone has suffered and will suffer pecuniary loss due to these defendants' knowingly false statements about Keystone.

78. Given the fact that Keystone warned defendants that it considered their statements or assertions to be false, that Keystone demanded a retraction, and that despite the foregoing defendants did not cease their misrepresentations, defendants' actions are wanton, willful, and warrant the imposition of punitive damages.

WHEREFORE, plaintiff Keystone respectfully requests that this Court enter judgment in its favor and against defendants and award damages to Keystone in an amount in excess of $20,000.00, plus Keystone's attorneys' fees, and such other equitable or legal relief as the Court deems appropriate.

COUNT VI: TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS

79. Keystone hereby incorporates by reference paragraphs 1 through 78 from above as though set forth at length.

80. The untrue, deceptive, and disparaging statements described above were made by Plymouth and some or all of the Individual Partners with the intent to cause damage to Keystone by interfering with Keystone's existing and prospective provider and

subscriber relationships.

81. These statements and actions were without any privilege or justification.

82. By their activities, including but not limited to Plymouth sending the July 18, 1991 letter to Plymouth providers, making disparaging statements about Keystone, and failing to pay the claims of Plymouth providers and thereby breaching the Agreement and the Contractor Agreements defendants intentionally, maliciously, and unlawfully interfered with existing and prospective contractual and business relationships between Keystone and its existing and prospective providers and members.

83. Defendants' actions, activities, and statements directly and severely harmed and continue to harm Keystone.

WHEREFORE, plaintiff Keystone respectfully requests that this Court enter judgment in its favor and against defendants and award damages to Keystone in an amount in excess of $20,000.00, plus Keystone's attorneys' fees, and such other equitable or legal relief as the Court deems appropriate.

COUNT VII: INDEMNIFICATION

84. Keystone incorporates by reference paragraphs 1 through 83 from above as though set forth at length.

85. Under the terms of the Agreement, Plymouth agreed to indemnify and hold harmless Keystone for any lawsuits or damages related to or resulting fron any negligent, tortious, or otherwise improper act or omission by Plymouth, the Associates, or any other Plymouth provider, relating to Plymouth's obligations under the Agreement.

86. The unlawful and/or irresponsible acts alleged in this Complaint to have been committed by Plymouth and/or any of the other named defendants are acts and omissions relating to Plymouth's obligations under the Agreement within the meaning of the contractual provisions described in the preceding paragraph.

87. Due to the aforementioned acts and omissions, Keystone has suffered and will continue to suffer damages.

88. Plymouth is therefore liable and must indemnify Keystone for any such losses.

WHEREFORE, plaintiff Keystone respectfully requests that this Court enter judgment in its favor and against defendants and award damages to Keystone in an amount in excess of $20,000.00, plus Keystone's attorneys' fees, and such other equitable or legal relief as the Court deems appropriate.

Mark A. Klugheit(I.D. #20148)

Joel H. Levitin (I.D. #51289)
Laura Aldir-Hernandez (I.D. #59577)
DECHERT PRICE & RHOADS
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103

Attorneys for Plaintiff
Keystone Health Plan East, Inc.

Dated: August 8, 1991

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
: SS.
COUNTY OF PHILADELPHIA :

John Daddis, being duly sworn according to law, deposes and says that he is Executive Director and Chief Operating Officer of Keystone Health Plan East, Inc.; that he is authorized to make this affidavit on behalf of Keystone Health Plan East, Inc.; and that the facts set forth in the foregoing verified complaint are true and correct to the best of his knowledge, information, and belief.

John Daddis

Executive Director and
Chief Operating Officer
Keystone Health Plan East, Inc.

Sworn to and Subscribed
Before me this 7th
Day of August, 1991.

Notary Public

CERTIFICATE OF SERVICE

I, Laura Aldir-Hernandez, Esquire, hereby certify that on this 8th day of August, 1991 I caused a true and correct copy of the foregoing Verified Complaint In Equity to be served by hand delivery upon the following:

PLYMOUTH HEALTHCARE SYSTEMS, INC.
531 W. Germantown Pike, Suite 201
Plymouth Meeting, PA 19462,

PLYMOUTH HEALTHCARE ASSOCIATES
531 W. Germantown Pike
Plymouth Meeting, PA 19462

CARL R. SONDER
1408 Mountain View Drive
Wayne, PA 19087

ROBERT M. MABEL
102 Evergreen Court
Blue Bell, PA 19422

DANIEL F. SMALTINI
2337 Rhawn Street
Philadelphia, PA 19152

BERNARD GARBER
823 Horning Road
Lancaster, PA 17601

_____
Laura Aldir-Hernandez, Esquire

CERTIFICATE OF SERVICE

DAVID S. DESSEN, ESQUIRE, hereby certifies that a true and correct copy of the within Petition for Writ of Certorari was served on below listed counsel, by first class mail, postage pre-paid on July 13, 1993:

Mark A. Klugheit, Esquire
1717 Arch Street
Philadelphia, PA 19103

Thomas B. Rutter, Esquire
Suite 750
The Curtis Center
Philadelphia, PA 19107

DAVID S. DESSEN, ESQUIRE

DATE: 7/13/93